CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PORTO RICO, PETITIONER,

vs.

RUSSELL & CO., SUCRS., S. EN C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1932

CERTIORARI GRANTED DECEMBER 5, 1932

(37,189)

(37,189)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PORTO RICO, PETITIONER,

vs.

RUSSELL & CO., SUCRS., S. EN C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in United States circuit court of appeals, first circuit	1	1
Caption.....(omitted in printing)..	1	
Record from district court of the United States, District of Porto Rico	1	1
Amended complaint	1	1
Petition for removal from insular district court	6	5
Order for removal from insular district court	10	8
Amended motion to remand	11	9
Answer to amended complaint	13	11
Exhibit A—Irrigation contract	31	27
Exhibit B—Union and Placeres contract	49	44
Demurrer to special defenses	61	55
Memorandum in support of demurrer	62	56
Opinion on demurrer, Wells, J	65	59
Agreed statement of facts	66	59
Opinion, Wells, J	75	68
Judgment	76	69

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 22, 1932

	Original	Print
Petition for appeal	77	70
Order allowing appeal	78	71
Assignment of errors	78	71
Bill of exceptions and order approving same	80	73
Bond on appeal (omitted in printing)	81	
Præcipe for transcript of record	83	74
Citation and return of service (unexecuted)	84	75
Certificate of clerk (omitted in printing)	85	
Complaint in district court of San Juan	87	76
Opinion, Bingham, J.	93	80
Petition for rehearing (omitted in printing)	107	
Minute entries	124	93
Judgment	124	93
Order denying rehearing	124	94
Memorandum re stay of mandate	124	94
Clerk's certificate (omitted in printing)	125	
Order allowing certiorari	126	94

[fols. a-1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF PORTO RICO

Law. No. 2049

THE PEOPLE OF PORTO RICO, Represented by MANUEL V. DOMENECH in His Character as Treasurer of Porto Rico, Plaintiff,

v.

RUSSELL & Co., Sucrs., S. en C., Defendant

AMENDED COMPLAINT—Filed November 13, 1930

Comes now the plaintiff, The People of Porto Rico and in its representation Manuel V. Domenech, Treasurer of Porto Rico, through the undersigned attorneys and by permission of the court first had and obtained files this amended complaint, complaining of Russell & Company, Sucesores, S. en C., and for cause of action against said Russell & Company alleges:

1. That the plaintiff, The People of Porto Rico, is a sov-
[fol. 2] ereign entity created by Act of the Congress of the United States of America, approved March 2, 1917, generally referred to as the Organic Act of Porto Rico; and Manuel V. Domenech is the duly appointed and qualified Treasurer of Porto Rico in accordance with law.

2. That the defendant is a civil agricultural partnership organized as a juridical entity under the civil laws of Porto Rico with capacity to sue and be sued. On information and belief that the civil agricultural partnership Russell & Company, Sucesores, S. en C., is now composed of the following persons who have associated themselves in said partnership for the purpose of growing sugar cane, to wit: Frank A. Dillingham, a citizen of and a resident in the State of New Jersey; Horace Havemeyer, a citizen of and resident in the State of New York; Edward S. Paine, a citizen of and living in the State of New York; Edwin L. Arnold, a citizen of and a resident of the State of Florida; Frank M. Welty, a citizen of and a resident

in the State of Ohio, and H. B. Orde, a citizen of Great Britain and a resident in the Dominion of Canada.

3. That the defendant company and its predecessor Russell & Company, S. en C., has been owner since before the year 1921 of the following pieces of land in the Island of Porto Rico, all subject to irrigation from the waters of the Southern Coast Irrigation System, as hereinafter set out:

(1) Farm marked as number 295 on the plan of the Porto Rican Southern Coast Irrigation System, called "Cristina", with a total area of 914.90 acres, situated in the Amuelas ward of the municipality of Juana Diaz, whose boundaries are the following: On the North the Jacaguas river and lots number 371, A-374-375-377 and the main road from Ponce to San Juan; on the South, lot No. 366A, and Jacaguas river lots number 291-925, C-296-359-364-366; on the East, lots number 294-296, A-317 A-319A-323A; on the West, the Jacaguas river and lots number 371 and 383.

(2) Farm called "Hacienda Luciana", marked as num-[fol. 3] ber 379, situated in the wards of Colores Collado and Jacaguas of the municipality of Juana Diaz, with a total area of 736.71 cuerdas, the boundaries of which are the following: On the North, the Jacaguas river; on the South the Jacaguas river and the main road; on the East, the road between Villalba and Juana Diaz; on the West, lot number 380 and the Jacaguas river.

(3) Farm No. 403 of the said plan, named "Hacienda Fortuna", situated in the Sabana Llana ward of the municipality of Juana Diaz, with a total area of 913.44 cuerdas, with the following boundaries: On the North lots numbers 307A, 335, 336, 334, 338, 339, 340, 391, 399, 402, 423 and the Jacaguas river; on the South lots number 404 and 413 and the Jacaguas river; on the East the Jacaguas river; and on the West the lots number 413, 414, 421 and 423.

(4) Farm No. 309, called "Hacienda Serano", situated in the municipality of Juana Diaz, with an area of 558.69 cuerdas and with the following boundaries: On the North by lots number 308 and 312; on the South by the Carib-

bean Sea; on the East lot No. 308; on the West lots number 308, 310, 311 and 316.

(5) Farm No. 413, called "Hacienda Union", situated in the municipality of Juana Diaz, with an area of 1044.55 acres and with the following boundaries: On the North by lot No. 403 and by the Ponce-Guayama insular road; on the South by the Caribbean Sea; on the East by the lots number 403, 404, the Jacaguas river, lots number 407, 408, 409, 410 and 411; on the West by the Inabon river and lot No. 414.

A certified copy of the plan of the irrigated district of the southern portion of the island, insomuch as to that part which is pertinent, accompanies this complaint and is made to form a part thereof.

4. The farms described in paragraph 3 of this amended complaint have been supplied since the year 1915 and are now being supplied with water for the purpose of irrigation from the public irrigation system on the southern side of Porto Rico, by virtue of a contract entered into between their owners, predecessors of the defendant company in [fol. 4] ownership, and the Commissioner of the Interior of Porto Rico, which contract entered into the 26th of August, 1914, was set forth in deed No. 20, executed in San Juan, Porto Rico, the 8th of July, 1916, before the notary Mr. Frank Antonsanti.

The plaintiff alleges that all the officials of the Government of Porto Rico charged with the compliance of the said contract have complied with same in its entirety, and in consequence the farms described in paragraph 3 of this amended complaint have received and are receiving all the volume of water agreed for the purposes of irrigation and from which their owners, i. e., the entity Russell & Company, Sucesores, S. en C., defendant, and its predecessors who executed the said contract have benefited.

5. Plaintiff alleges that the above described pieces of land, have not been and are not subject to payment of the irrigation tax imposed under the provisions of an Act of the Legislature of Porto Rico, approved September 18, 1908, entitled "An Act to provide for the construction of an irrigation system and to provide revenues therefor; for the temporary appropriation of $200,000 to begin such work and for other purposes", as amended.

6. That the First Session of the Tenth Legislature of Porto Rico passed an Act entitled "An Act fixing a tax on certain lands using waters from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", which law was approved by the Governor of Porto Rico July 8, 1921, and which took effect 90 days after its approval. Said Act is known as Act No. 49 of 1921. That in accordance with the provisions of said Act No. 49 of 1921 the lands of defendant company, described above in paragraph 3 of this complaint, became subject to the payment of a special tax imposed by said Act No. 49.

7. The plaintiff alleges that strictly in accordance with the provisions of said Act No. 49 of 1921 the following amounts have been levied and assessed as taxes against the lands of defendant described in paragraph 3 of the complaint, as follows:

[fol. 5] On the farm No. 295 for the fiscal years from 1922-23 up to the 31st of March, as taxes, class 3, the sum of	$4,391 14
And as surcharges	1,029 07
On the farm No. 379, as class 3, as taxes from 1922-23 up to March 31, 1930	7,466 10
And as surcharges	1,749 68
On the farm No. 403, for the same fiscal years up to March 31, 1930, as class 3 and class 4, described in Section 2 of the stated law, as taxes	22,296 08
And as surcharges	5,225 11
On the farm No. 309 for the same fiscal years and up to stated date, as class 4, as taxes	11,279 30
And as surcharges	2,643 33
On the farm No. 413 for the same fiscal years and up to stated date, as class 4, as taxes	4,485 94
And as surcharges	1,051 29
Resumé:	
Total of taxes owed by the mentioned farms	$49,918 56
Total surcharges owing according to law	11,698 48
Total	$61,617 04

9. The plaintiff alleges that subsequent to the year 1922 the Treasurer of Porto Rico endeavored from time to time to collect from the defendant the corresponding taxes levied and assessed against lands of the defendant according to the provisions of said Act No. 49 of 1921 and that the defendant, though often requested, has failed and refused to pay said taxes or any part thereof, and has constantly obstructed the Treasurer of Porto Rico in the collection of said taxes by injunction suits in the District Court of the United States for Porto Rico and by other means.

10. The plaintiff alleges that the total taxes owed by the defendant on the above mentioned farms for the years [fol. 6] 1922-23 to 1929-30, in the sum of $49,918.56 plus the total surcharges owing according to law in the sum of $11,698.48, making a total amount of $61,617.04, are due and unpaid and constitute a just debt in favor of the plaintiff against defendant and that plaintiff has not received said taxes and surcharges or any part thereof.

Wherefore, plaintiff prays the court to sustain this complaint and after due hearing to render a judgment in favor of the plaintiff, condemning the defendant to pay into the treasury of Porto Rico the full sum of $61,617.04 together with legal interest from the time of the filing of the complaint in this case, and in addition to pay all costs, expenses and attorneys' fees occasioned by this litigation and for such other remedy as to the court may seem proper.

San Juan, Porto Rico, November 13, 1930.

James R. Beverley, Attorney General. M. Rodriguez Serra, of Counsel.

Notified with copy this thirteenth day of November, 1930.

William J. Gilleran, by R. Castro Fdez, Attorney for Defendant, Russell & Company, Sucesores, S. en C.

In District Court of San Juan

Petition for Removal—Filed August 4, 1930

The petitioners, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and

Frank M. Welty, entering a special appearance in this case to the ends of this petition, through their undersigned attorneys, set forth to the court and allege as follows:

1. That they were at the time of beginning this suit, and at all times since that date have been and now are, the only partners constituting the civil agricultural partnership Russell & Co., Sucesores, S. en C., heretofore Russell [fol. 7] & Co., S. en C. That the petitioners Horace Havemeyer, Frank A. Dillingham and Edward S. Paine were then, and now are, the only managing partners, and that the petitioners Edwin L. Arnold, H. B. Orde and Frank M. Welty were then, and still are, the only silent partners constituting the said partnership Russell & Co., Sucesores, S. en C. That the petitioners were at the time of commencing this suit, and at all times since that date have been and now are, the defendants and the only defendants in this suit. That the partnership Russell & Co., Sucesores, S. en C., is the same and identical partnership as Russell & Co., S. en C., having changed the old name of Russell & Co., S. en C., to the present name of Russell & Co., Sucesores, S. en C.

2. That this suit is of a civil character and that the matter and the amount in controversy in this suit exceeds the sum or value of $3,000 exclusive of interest and costs.

3. That this suit was at the time of its commencement, and at all times subsequent to the filing of same was, and now is, a suit between The People of Porto Rico, a political entity created by and in accordance with the laws of the Congress of the United States, represented by Manuel V. Domenech, a citizen and resident of the Island of Porto Rico, domiciled in this island, as plaintiff; and five citizens of the United States of America, neither residents of nor domiciled in the Island of Porto Rico, and a subject of the King of Great Britain, citizen of the Dominion of Canada, neither a resident of nor domiciled in the Island of Porto Rico, as defendants.

4. That at the time of the bringing of this suit your petitioner Horace Havemeyer was, and at all times subsequent to that date has been and now is, a citizen of the United States of America and of the State of New York, and a resi-

dent of and domiciled in the municipality of Islip and the State of New York; that at the time of inaugurating this suit your petitioner Frank A. Dillingham was, and at all times thereafter has been and now is, a citizen of the United States of America and of the State of New Jersey, and a resident of and domiciled in the town of Millburn and the [fol. 8] State of New Jersey; that at the time of initiating this suit your petitioner Edward S. Paine was, and at all times since has been and now is, a citizen of the United States of America and of the State of New York, and a resident of and domiciled in the City of New York, State of New York; that at the time of originating this suit your petitioner Edwin S. Arnold was, and thereafter at all times has been and now is, a citizen of the United States of America and of the State of Florida, and a resident of and domiciled in the city of Palm Beach and the State of Florida; that at the time of starting this suit your petitioner Frank M. Welty was, and at all times since has been and now is, a citizen of the United States of America and of the State of Ohio, and a resident of and domiciled in the town of New Philadelphia and the State of Ohio; that at the time of the inception of this suit your petitioner H. B. Orde was, and at all times thereafter has been and now is, a citizen and subject of the kingdom of Great Britain and of the Dominion of Canada, and a resident of and domiciled in the city of Ottawa and the Dominion of Canada; that neither of the petitioners were at the time of filing this suit, nor have they been at any time since nor are they now, either citizens of the Island of Porto Rico nor residents of or domiciled in the Island of Porto Rico.

5. That The People of Porto Rico is the plaintiff in this suit and at the time of commencing this suit was, and at all times since has been and now is, an organism or political body created by and in accordance with the laws of the Congress of the United States duly approved by the President of the United States; that the said plaintiff is represented in this suit by Manuel V. Domenech and that he was at the time of beginning this suit, and at all times subsequent thereto has been and now is, a citizen of the United States and of the Island of Porto Rico and a resident of and domiciled in the Island of Porto Rico.

6. That this suit is a suit in which the District Court of the United States for Porto Rico has original concurrent jurisdiction in accordance with the United States statutes.

[fol. 9] 7. Your petitioners offer herewith a good and sufficient bond to guarantee the filing in the District Court of the United States for Porto Rico, within thirty days from the filing of this petition, of a certified copy of the record in this suit, and further in guarantee of the payment of all the costs that may be adjudicated by the said District Court of the United States for Porto Rico should the said court find that this suit has been illegally or unduly removed to the said court.

8. That your petitioners desire to remove this suit from this District Court to the District Court of the United States for Porto Rico prior to the trial of the same in accordance with the United States statutes in such cases made and provided.

Wherefore, your petitioners pray this Honorable Court to proceed no further in this case except to decree the removal of this suit to the District Court of the United States for Porto Rico as provided by law, and except for the acceptance and approval of the bond and sureties of the bond presented with this petition and praying that the said removal be ordered, and that the record in this case be sent to the District Court of the United States for Porto Rico, and approving the said bond.

San Juan, Porto Rico, July 19, 1930.

Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde, Frank M. Welty, Petitioners, by O. B. Frazer, Attorney.

Duly sworn to by O. B. Frazer. Jurat omitted in printing.

Filed July 23, 1930. J. N.

[fol. 10] In District Court of San Juan

Order for Removal—Filed August 4, 1930

Heard on the 29th of July, 1930, the motion of the petitioners, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty,

praying for the removal of this case to the District Court of the United States for Porto Rico, and considering the bond for five hundred dollars accompanying same;

The court, in accordance with Section 28 of the Federal Judicial code and the doctrine established in the cases People of Porto Rico v. Fortuna Estates, 279 Fed. Rep. 500; Goyco v. Russell & Co., 4 Fed. (2d), and South Porto Rico Sugar Co. v. Sepulveda, 27 P. R. R. 310;

Hereby orders and decrees that this case be removed in the manner provided by law to the District Court of the United States for Porto Rico, at the same time approving the bond presented by the petitioner.

[fol. 11] Given in San Juan, P. R., this twenty-ninth day of July, 1930.

C. Llauger Diaz, District Judge.

Notified the parties this 30th of July, 1930.

P. N. Colberg, Secretary.

In United States District Court

Amended Motion to Remand—Filed August 15, 1930

Now comes the plaintiff and moves the court to remand the above-entitled cause to the District Court of San Juan, Porto Rico, from whence it was removed for trial, for the following reasons:

1. Because defendant in this case, as it appears from the complaint, is a civil partnership constituted under the provisions of the Civil Code of Porto Rico. The same as corporations, associations and institutions of public interest, the private civil partnership has a juridical personality which is independent of the personality of its individual members. Civil juridical persons are legally empowered to acquire and possess property of all kinds, to contract obligations and institute civil actions in accordance with the law. (Sections 27 to 30 of the Civil Code.) Under the civil law, a partnership stands on the same footing as a corporation in so far as its capability of suing and being sued is concerned. Therefore Russell & Company being a domestic partnership there is no diversity of citizenship in this case.

2. Because the plaintiff in this case is The People of Porto Rico, this court has no jurisdiction to try the several questions in controversy herein. Under section 41 of the Organic Act of Porto Rico (Law of Congress approved March 2, 1917), this court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign state or states, or citizens of a state, territory or district of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of $3,000, and of all controversies in which there is [fol. 12] a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid. The People of Porto Rico is neither a citizen nor a subject. It is a body politic with governmental powers, a sovereign. It should be considered, for the purpose of the jurisdiction of the court in cases of removal from the insular district courts, the same as a State and an action in a State court, as the present action was brought, by the State against citizens of other States, is not removable to the Federal court for diversity of citizenship; and a suit is not removable for diversity of citizenship where a State is a party.

Parks v. Carriere Consol. School District, 12 Fed. (2d) 37.

Arkansas v. Kansas & T. Coal Co., 22 S. Ct. 47; 183 U. S. 185; 46 L. Ed. 144.

In re Johnson Oil & Refining Co., 26 Fed. (2d) 951.

V. County of Upshur v. Rich, 135 U. S. 467; 10 S. Ct. 651; 34 L. Ed. 196.

Fitts v. McGee, 172 U. S. 516; 19 S. Ct. 269; 43 L. Ed. 535.

Wherefore plaintiff says that this court has no jurisdiction to try and determine this case and prays that the same be removed to the District Court of San Juan, Porto Rico, from whence it came.

San Juan, Porto Rico, August 14, 1930.

James R. Beverley, Attorney General of Porto Rico.
M. Rodriguez Serra, of Counsel.

Notified with copy this fourteenth day of August, 1930.

O. B. Frazer, by R. Castro Fdez, Attorney for Defendant.

[fol. 13] IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDED COMPLAINT—Filed December 19, 1930

Come now Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, constituting the civil agricultural partnership of Russell & Co., Sucesores, S. en C., the defendants in the above-entitled action, by their undersigned attorneys, and answer the amended complaint herein as follows:

1. Defendants admit the allegations of paragraph 1 of the amended complaint except that defendants deny that The People of Porto Rico is a sovereign.

2. Defendants admit that the civil agricultural limited partnership of Russell & Co., Sucesores, S. en C., is now composed of the persons named in paragraph 2 of the amended complaint who have associated themselves in said civil agricultural limited partnership for the purpose of growing sugar cane, and the defendants further admit the citizenship and residence of each of said partners as set forth in said paragraph 2 of the amended complaint, but except as herein admitted the defendants deny the allegations contained in said paragraph 2 of the amended complaint.

3. Answering paragraph 3 of the amended complaint, defendants admit that they have been the owners since before the year 1921 of the parcels of land described in subdivisions (1), (2), (3), (4) of said paragraph 3 of the amended complaint and designated respectively as farm No. 295, called Cristina, farm No. 379, called Hacienda Luciana, farm No. 403, called Hacienda Fortuna, and farm No. 3093, called Hacienda Serrano, but defendants deny that they have been since the year 1921 or now are the owners of the farm No. 413, called Hacienda Union, described in subdivision (5) of paragraph 3 of the amended complaint, and allege that the defendants are and since before the year 1921 have been the sub-lessees of the lands described in said subdivision (5) of paragraph 3 of the amended complaint as farm No. 413, which said lands are [fol. 14] known as Haciendas Union and Placeres.

4. Answering paragraph 4 of the amended complaint, defendants admit that the farms described in paragraph 3 of

the amended complaint have been supplied since the year 1915 and are now being supplied with water for the purpose of irrigation from the Public Irrigation System on the southern side of Porto Rico by virtue of the contract referred to in paragraph 4 of the amended complaint to which said contract, a copy of which is hereto annexed and made a part of this answer marked "Exhibit A", defendants refer for explanation of its terms and provisions and legal effect. Defendants deny upon information and belief that the officials of the Government of Porto Rico charged with the compliance of said contract have complied with the said contract in its entirety and deny upon information and belief that the farms described in paragraph 3 of the amended complaint have received or are receiving all the volume of water agreed for the purposes of irrigation and the defendants further deny that they or their predecessors who executed the contract have benefited therefrom.

5. Defendants admit the allegations contained in paragraph 5 of the amended complaint.

6. Answering paragraph 6 of the amended complaint, defendants deny so much thereof as alleges that in accordance with the provisions of Act No. 49 of 1921 the lands of the defendants described in paragraph 3 of the amended complaint became subject to the payment of a special tax imposed by said Act No. 49 of 1921.

7. Answering paragraph 7 of the amended complaint, defendants deny upon information and belief that the amounts specified in paragraph 7 of the amended complaint have been levied and assessed as taxes against the lands described in paragraph 3 of the amended complaint and defendants further deny upon information and belief that such amounts have been levied in accordance with the provisions of said Act No. 49 of 1921.

[fol. 15] 8. Defendants deny so much of paragraph 9 as alleges that the defendants have obstructed the Treasurer of Porto Rico in the collection of said taxes "by other means".

9. The defendants deny that they owe for the years 1922-23 to 1929-30 the sum of $61,617.04 as taxes and surcharges on the lands described in the amended complaint, or any other sum, and defendants deny that the said sum

of $61,617.04 is due to the plaintiff herein and further deny that the said amount constitutes a just debt in favor of the plaintiff against the defendants herein.

For a first separate and distinct defense the defendants allege as follows:

10. That the defendants are and have been at all times since before the year 1921 the owners in fee simple of the four tracts known as haciendas Fortuna, Cristina, Luciana and Serrano, described in paragraph 3 of the amended complaint as farms Nos. 403, 295, 379 and 309 respectively, and in actual possession thereof and are and have been at all such times by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription the owners of water rights in favor of said lands, for using thereon, for the irrigation thereof, waters from the Jacaguas river, a non-navigable river flowing into the Caribbean Sea, the said water rights appurtenant thereto being generally described as follows:

1. For the tract known as the Hacienda Fortuna, comprising approximately 312.07 hectares of land, the right to take from the river Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year for said Hacienda Fortuna.

2. For the tract known as the Hacienda Cristina, comprising approximately 308.14 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 106.74 liters of water per second, equivalent to 2,728.969 acre feet of water per year for said Hacienda Cristina.

[fol. 16] 3. For the tract known as the Hacienda Luciana, comprising approximately 243.58 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Hacienda Luciana.

4. For the tract known as the Hacienda Serrano, comprising approximately 219.15 hectares of land, the right to take from the river Jacaguas, for irrigation, 102.47 liters of water per second, equivalent to 2,619.769 acre feet of water per year for said Hacienda Serrano.

11. Upon information and belief, that the defendants' predecessors in title had been for upwards of twenty (20)

years prior to August 26, 1914, and the defendants and their predecessors in title at all times since August 26, 1914, have been and defendants are now taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription, to the aggregate amount of 11,032.79 acre feet per year, apart from torrential waters, taking the same from the bed of said river through intakes built and established for the purpose by the defendants predecessors in title.

12. Upon information and belief, that the defendants are and at all times since before the year 1921 have been also the owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, of the right to take and use, for the irrigation of one or more of the estates above mentioned, torrential water from said Jacaguas river; and that defendants' predecessors in title for upwards of twenty years prior to the twenty-sixth day of August, 1914, have been taking and using for the irrigation of said estates and defendants and their predecessors in title at all times since August 26, 1914, have been and defendants are still taking and using for that purpose, torrential waters from the bed of the Jacaguas river during the time of high water, without limit as to quantity, except as limited by the size and location of the torrential [fol. 17] intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription, and by virtue of the contract hereinafter set forth in paragraph 16.

13. That heretofore The People of Porto Rico authorized and undertook the construction of a public irrigation system in accordance with the Public Irrigation Law approved September 18, 1908, as amended, and have in the construction of the said irrigation system erected a dam for the impounding and storage of a part of the waters of the Jacaguas river which is known as the "Guayabal Dam" and extends across the bed of the said Jacaguas river above said intakes which the defendants use and they and their predecessors in title have used for taking and using water for irrigating their said haciendas or estates and the estates Union and Placeres hereinafter mentioned.

14. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the Interior, pursuant to the provisions of said Public Irrigation Law and in order that The People of Porto Rico might lawfully impound the waters of the Jacaguas river behind the Guayabal dam, requested the defendants' predecessors in title to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said concessions, royal decrees, user and prescription, in favor of the four parcels of land described above in paragraph 10 and known as Fortuna, Cristina, Luciana and Serrano, but that its said request was refused.

15. That thereafter The People of Porto Rico, acting through its then Commissioner of the Interior and its then Attorney General, entered into negotiations with Fortuna Estates, one of defendants' predecessors in title, for the purpose of fixing the times and places at which the amount of water other than torrential water which said Fortuna Estates was entitled to take for said haciendas Fortuna, Cristina, Luciana and Serrano, by reason of its rights under the said concessions, royal decrees, user and pre-[fol. 18] scription, should be delivered to it after the Guayabal dam should be completed and in operation owing to the changed conditions resulting therefrom; that as a result of such negotiations, it was agreed by the defendants' predecessor in title, Fortuna Estates, and the then Commissioner of the Interior and the then Attorney General, acting on behalf of The People of Porto Rico, that the water from the Jacaguas river, other than torrential water, to which defendants' said predecessor in title, Fortuna Estates, was, and defendants are, entitled for said haciendas Fortuna, Cristina, Luciana and Serrano by reason of said concessions, royal decrees, user and prescriptions, amounting to 11,032.79 acre feet per year, should be thereafter taken and used by it partly in regular daily amounts aggregating 8,258.98 acre feet per year at various intakes located on its property and that the balance, amounting to 2,773.81 acre feet per year, or 3.86 second feet, should be taken by it at the Aruz pump or intake on said river, from any waters in said river not necessary for supplying the owners of lower concessions subsisting prior to August 26,

1914, with the amounts of water to which they are entitled by virtue of such concessions or of agreements entered into with The People of Porto Rico.

16. That pursuant to such agreement Fortuna Estates, one of defendants' predecessors in title, did on or about the twenty-sixth day of August, 1914, enter into a contract with Ernest S. Wheeler, then Assistant Commissioner of the Interior and discharging the duties and functions of Commissioner of the Interior in Porto Rico, in representation of and on behalf of The People of Porto Rico, which said contract embodied and embodies and was and is intended to embody the agreement described in paragraph 15 hereof; that thereafter and on or about the eighth day of June, 1915, the said contract was in accordance with the terms thereof protocolized and put in the form of a notarial instrument duly executed by said Fortuna Estates and by Manuel V. Domenech, then Commissioner of the Interior of Porto Rico, a copy of which contract is hereto annexed [fol. 19] marked "Exhibit A" and made a part hereof as fully as if it were set out at length herein. That by said contract the said water right of said Fortuna Estates for said haciendas were recognized and continued in full force and effect and in no wise relinquished, the mode of receiving the water being temporarily modified but the right thereto and the amount thereof being left unchanged; that in carrying on the negotiations referred to hereinabove in paragraph 15, and in executing the contract mentioned in this paragraph, the said Commissioner of the Interior acted under the authority of the Act of the Legislature of Porto Rico, approved August 8, 1913, which Act duly recognized the property rights of holders of Spanish concessions, among whom was defendants' predecessors in title Fortuna Estates.

17. That thereafter Fortuna Estates duly sold, assigned and transferred to the defendants its title to the four parcels of land described above in paragraph 10 and all its rights, benefits and privileges under the concessions referred to hereinabove in paragraphs 10, 11 and 12 and otherwise, and all its rights, title and interest in and to said contract described in the preceding paragraph and all waters to which it might be entitled thereunder.

18. Upon information and belief, that Jose A. Poventud, and Sergio Torruella Cortada and the Sucesion de J. Serralles are and they and their predecessors in title at all times since before the year 1921 have been the owners in fee simple of the two tracts of land situated in the municipality of Juana Diaz, Island of Porto Rico, known as haciendas Union and Placeres and described in paragraph 3 of the amended complaint as farm No. 413 and, through their sublessees, the defendants herein are and at all times since prior to the year 1921 have been in actual possession thereof and are and have been during such times by virtue of certain concessions royal decrees of the Kingdom of Spain, user and prescription, the owners of water rights in favor of said lands, for using thereon for the irrigation thereof waters from the said Jacaguas river, a non-navi- [fol. 20] gable river flowing into the Caribbean Sea, the said lands and said water rights appurtenant thereto being generally described as follows:

1. One tract known as the Hacienda Union, comprising approximately 150.14 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for the said Hacienda Union.

2. One tract known as the Hacienda Placeres, comprising approximately 240.54 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof, 22.00 liters of water per second, equivalent to 565.75 acre feet of water per year for the said Hacienda Placeres.

That heretofore and prior to the year 1921 the owners of said two tracts of land executed a lease for a term of years in favor of defendants' predecessors in title and incidentally thereto assigned to defendants' predecessors in title all their rights whether by concessions, royal decrees, user and prescription or contract, for the taking of water for said lands, that under the terms of said lease and lessee is obligated to pay any taxes which may be assessed against the said lands.

19. Upon information and belief, that the said owners of said two parcels of land and their predecessors in title and

defendants' predecessors in title, as lessees, had been for upwards of twenty years prior to August 26, 1914, taking and using and the defendants and their predecessors in title, as lessees, have been at all times since August 26, 1914, and defendants are now taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription.

20. Upon information and belief, that said Jose A. Poventud and Sergio Torruella Cortada and the Sucesion de J. Serralles are also owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription of the right to take and use torrential waters from the Jacaguas river for the irrigation of said haciendas de- [fol. 21] scribed above in paragraph 18 and known as Union and Placeres; and that said Jose A. Poventud and Sergio Torruella Cortada and Sucesion J. Serralles and their predecessors in title through defendants and their predecessors in title as lessee for upwards of twenty years prior to the twenty-sixth day of August, 1914, have been taking and using for the irrigation of said estates, and defendants are still taking and using for that purpose, torrential waters from the bed of the Jacaguas river during the time of high water, without limit as to quantity, except as limited by the size and location of the torrential intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription, and by virtue of the contract hereinafter set forth in paragraph 23.

21. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the Interior pursuant to the provisions of the said Public Irrigation Law and in order that The People of Porto Rico might lawfully impound the waters of the Jacaguas river behind the Guayabal dam, requested the predecessors in title of said Jose A. Poventud, Sergio Torruella and Sucesion J. Serralles and defendants' predecessors in title to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said concessions, royal decrees, user and prescription in favor of the two parcels of land described above in paragraph 18

and known as Union and Placeres, but that its request was refused.

22. That subsequently to the acts set forth in paragraph 21 hereinabove The People of Porto Rico, acting through its then Commissioner of the Interior and its then Attorney General, entered into negotiations with the then owners, Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, the predecessors in title of the said present owners and with Fortuna Estates, the predecessors in title of defendants as lessee, for the purpose of fixing the times and places at which the amount of water other than torrential waters [fol. 22] which the said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada, and Sergio Torruella Cortada and said Fortuna Estates as their lessee, were entitled to take for said haciendas Union and Placeres by reason of their rights under the said concessions, royal decrees, user and prescription, should be delivered to them after the Guayabal dam should be completed and in operation owing to the changed conditions resulting therefrom; that as a result of such negotiations it was agreed by said owners Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada and by defendants' said predecessor in title, Fortuna Estates, and the then Commissioner of the Interior and the then Attorney General acting on behalf of The People of Porto Rico that the water from the Jacaguas river other than torrential water to which said owners and defendants' said predecessors in title were and said present owners and defendants are entitled for the said haciendas Union and Placeres by reason of said concessions, royal decrees, user and prescription amounting to 1,579.31 acre feet of water per year should be thereafter taken and used by them partly in regularly daily amounts aggregating 946.55 acre feet per year at various intakes located on their property.

23. That pursuant to said agreement said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, being the predecessors in title of the said present owners, and the lessee Fortuna Estates, being the predecessors in title of defendants, did on or about the twenty-sixth day of August, 1914, enter into a contract with Ernest S. Wheeler, then Assist-

ant Commissioner of the Interior and discharging the duties and functions of the Commissioner of the Interior of Porto Rico in representation of and on behalf of The People of Porto Rico, which said contract embodies and was and is intended to embody the agreement described in paragraph 22 hereof, and a copy of which contract is hereto annexed marked "Exhibit B" and made a part hereof as fully as if it were set out at length herein. That by said [fol. 23] contract the said water rights of said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, and their lessee, Fortuna Estates, for said haciendas Union and Placeres were recognized and continued in full force and effect and in no wise relinquished, the mode of receiving the water being temporarily modified but the right thereto and the amount thereof being left unchanged; that in carrying on the negotiations hereinabove referred to in paragraph 22 and in executing the contract mentioned in this paragraph, the said Commissioner of the Interior acted under the authority of the Act of the Legislature of Porto Rico, approved August 8, 1913, which Act duly recognized the property rights of holders of Spanish concessions, among whom were Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, the predecessors in title of said present owners, and said Fortuna Estates, the predecessors in title of the defendants.

24. That thereafter Fortuna Estates, being then the lessee of the said haciendas Union and Placeres with all water rights benefitting said property or the owners thereof and being lessees thereof for a term of years, duly sold, assigned and transferred to the defendants its leasehold title to said haciendas Union and Placeres described above in paragraph 18 and all rights, benefits and privileges to which it and its assignors were or might be entitled under the concessions referred to hereinabove in paragraphs 18 and 19 and otherwise and in and to said contract described in the preceding paragraph and all waters to which it or its said lessors might be entitled thereunder.

25. That heretofore, by a decree of this court entered July 16, 1918, in Equity case No. 970, entitled "Russell & Co., S. en C., Complainant, v. Emilia V. Henna et al., De-

fendants, and The People of Porto Rico, Intervenor", affirmed by the Circuit Court of Appeals, First Circuit, on appeal taken by The People of Porto Rico, the defendants' right to water under said contract of August 26, 1914, in favor of haciendas Fortuna, Cristina, Luciana and Serrano [fol. 24] was adjudicated valid and existing and a perpetual injunction was issued against The People of Porto Rico enjoining it and its agents and employees from diverting or obstructing the waters of the Jacaguas river other than those required for concessions existing in said river prior to August 26, 1914; that there has been no change whatsoever in the rights of defendants as to said haciendas Fortuna, Cristina, Luciana and Serrano from the time of said decree to the present time.

26. That the rights of said Jose A. Poventud and Sergio Torruella Cortada and Sucesion J. Serralles and defendants, their lessees, to take water under said contract of August 26, 1914, in favor of haciendas Union and Placeres is now and at all times has been in every way similar to the rights to water under said contract of August 26, 1914, in favor of haciendas Fortuna, Cristina, Luciana and Serrano.

27. That neither the defendants herein nor the said lands hereinabove described have received nor are they now receiving nor have they been supplied nor are they now being supplied with any water for the irrigation of said lands from the Southern Coast Public Irrigation System except such waters as the said defendants and the said lands were and are entitled to receive under and by virtue of said concessions, royal decrees of the Kingdom of Spain, user and prescription and under and by virtue of said contracts of August 26, 1914, hereinabove set forth.

28. That the Act No. 49 of 1921 approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", under which Act the plaintiff herein claims the right to levy the taxes and surcharges herein sued for, in so far as said Act No. 49 of 1921 purports to levy and impose a tax upon the said lands hereinabove described, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of

[fol. 25] the Constitution of the United States and the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act No. 49 of 1921 impairs the obligation of the said contracts of August 26, 1914, hereinabove referred to, which said contracts are now and were at the time of the passage of the said Act No. 49 of 1921 valid and existing.

For a second separate and distinct defense the defendants allege:

29. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

30. That in so far as the said Act No. 49 of 1921, under which the plaintiff herein claims the right to levy the taxes and surcharges herein sued for, purports to levy a tax upon the lands hereinabove described, said Act No. 49 of 1921 is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and of the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that the said Act purports to levy a special assessment against said lands without any corresponding benefit to said lands or the owners thereof, thus depriving the defendants herein of their property without due process of law.

For a third separate and distinct defense the defendants allege:

31. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

[fol. 26] 32. That the Act No. 49 of 1921 under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, in so far as said Act No. 49 pur-

ports to levy a tax upon the lands hereinabove described, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to confiscate property rights of the defendants, to wit, the said water rights attached and annexed to the said lands, thus depriving defendants of their property without due process of law and taking private property for public use without just compensation.

For a fourth separate and distinct defense the defendants allege:

33. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

34. That the Act No. 49 of 1921, under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, in so far as said Act purports to levy a tax upon the lands hereinabove described, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to confiscate property rights of the defendants, to wit, the said water rights existing by virtue of the said contracts of August 26, 1914, hereinabove set forth, thus depriving defendants of their property without due process of law and taking private property for public use without just compensation.

[fol. 27] For a fifth separate and distinct defense the defendants allege:

35. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the

same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

36. That the said Act No. 49 of 1921 under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, in so far as said Act purports to levy any tax upon the lands hereinabove described, is null and void and without any legal force or effect whatsoever because said Act No. 49 of 1921 is in contravention of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to impose a tax upon the said property of the defendants and not upon other property in the Island of Porto Rico, thus violating the requirement of uniformity contained in said Organic Act.

For a sixth separate and distinct defense the defendants allege:

37. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

38. That the said Act No. 49 of 1921 under which the plaintiff claims the right to levy the taxes and surcharges sued for herein, in so far as said Act purports to levy any tax upon the lands hereinabove described, is null and void and without any legal force or effect whatsoever because said Act No. 49 of 1921 is in contravention of the Treaty of 1898 with Spain, known as the Treaty of Paris, in that said Act impairs and destroys property rights of the defendants which were granted by the Spanish Government [fol. 28] and were existing and valid at the time of the execution and promulgation of the said Treaty.

For a seventh separate and distinct defense the defendants allege:

39. That the Act No. 49 of 1921, approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes",

under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to impose the tax therein provided for upon a limited class of lands arbitrarily selected and irrespective of benefits conferred, thus violating the prohibition contained in the said Organic Act against unequal protection under the law.

For an eighth separate and distinct defense the defendants allege:

40. That the Act No. 49 of 1921, approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and of the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act No. 49 of 1921 delegates to administrative officers the legislative function of levying the tax therein provided for.

[fol. 29] For a ninth separate and distinct defense the defendants allege:

41. That Act No. 49 of 1921, approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, is null and void and without any legal force or effect because Act No. 49 of 1921 is in contravention of the Constitution of the United States and of the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act No. 49 of 1921 provides for the determination of the amount and application of

taxes payable thereunder and the collection thereof by the Treasurer, and no provision is made in said Act for the notification of or holding of any hearing at which the defendants or other landowners might appear and contest the amount of said taxes nor for hearing de novo on appeal, nor for judicial review of any kind, thus depriving the defendants of their property without due process of law.

For a partial defense the defendants allege:

42. That heretofore and on or about the twelfth day of June, 1926, pursuant to a final decree of this court entered June 11, 1926, in equity case No. 1250, entitled "Horace Havemeyer et al., Complainant, v. Juan G. Gallardo, Defendant", the defendants herein obtained after trial on the merits in this court an injunction forever restraining the assessment or collection of any tax under or pursuant to the Act No. 49 of 1921, approved on or about July 8, 1921, against the defendants or the lands hereinabove described; that an appeal was thereafter taken from said final decree to the Circuit Court of Appeals, First Circuit, which appeal was pending before said Circuit Court of Appeals on March 4, 1927, and abated solely by reason of the provisions of the Act entitled: "An Act to amend and reenact sections 3, 20, 31, 33, 38 and 48 of [fol. 30] the Act of March 2, 1917, entitled 'An Act to provide a civil government for Poto Rico, and for other purposes', as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as '5a' of said Act."

43. That this suit is brought by the plaintiff herein pursuant to and under the authority contained in the public Act No. 302 of the Seventieth Congress of the United States, approved April 23, 1928, and entitled "An Act for the relief of certain Porto Rican taxpayers".

44. That more than one year had elapsed between the date of the approval of said Act No. 302 and the date of the institution of this suit and the cause of action alleged in the amended complaint, in so far as the same relates to taxes enjoined by said injunction of June 12, 1926, is

barred in accordance with the provisions of said Public Act No. 302.

Wherefore the defendants pray judgment dismissing the amended complaint herein with costs.

San Juan, Porto Rico, December 19, 1930.

William J. Gilleran, Ryder Patten, Attorneys for Defendants.

Duly sworn to by William J. Gilleran. Jurat omitted in printing.

[fol. 31] Copy of the within answer and Exhibits A and B received this nineteenth day of December, 1930.

James R. Beverley, Attorney General, Attorney for Plaintiff.

EXHIBIT A TO ANSWER

Irrigation Contract

Number Twenty

In the City of San Juan, Island of Porto Rico, on this eighth day of June, A. D. nineteen hundred fifteen before me, Frank Antonsanti, attorney at law and notary public, with office in the Royal Bank Building, San Juan, Porto Rico, and duly licensed to practice throughout the Island, personally appeared: Manuel V. Domenech, who is of age, married, a resident of this city, by profession a civil engineer, and at the present time Commissioner of the Interior of Porto Rico, which function he has been discharging since the twenty-ninth day of October, A. D. nineteen hundred fourteen, as party of the first part, and Julius Umbach, who is of lawful age, married, a merchant and a resident of the City of Ponce, as party of the second part.

The party of the first part appears in his official ca-[fol. 32] pacity of Commissioner of the Interior of Porto Rico, and in representation and on behalf of The People of Porto Rico, and the party of the second part does so as attorney in fact and on behalf of the Fortuna Estates, which is a corporation organized under the laws of the

State of New York, having its principal office in Porto Rico in the City of Ponce.

I, the notary, hereby certify as to being personally acquainted with the appearing parties they assuring me that they are in the full enjoyment of their civil rights, which fact as well as the respective representations of the said parties is personally known to me.

The said appearing parties thereupon freely state:

That on the twenty-sixth day of August, A. D. nineteen hundred fourteen, a certain private contract was entered into by and between Ernest S. Wheeler, as Assistant Commissioner of the Interior of Porto Rico, at the time acting as Commissioner of the Interior in representation and on behalf of The People of Porto Rico, as party of the first part, and the Fortuna Estates, represented by its attorney in fact Julius Umbach, as party of the second part, and which contract is fully transcribed hereinafter.

That by virtue of the said private contract hereinbefore referred to and which was acknowledged before M. Manuel Toro and Damian Monserrat, notaries public, on the twenty-sixth and twenty-eighth of August, nineteen hundred fourteen, and as specifically provided by clause sixteenth thereof, it was agreed by the parties thereto that a public document should be drawn embodying the said private agreement, at the request of either of the parties to said contract, and, the parties thereto and hereto having mutually expressed their desire at this time to embody the said private agreement in a public document, for carrying into effect their desire, they hereby state:

That the private agreement as entered into by and between the parties thereto is as follows, to wit:

[fol. 33] Fortuna Estates Contract

Memorandum of Agreement made this twenty-sixth day of August, 1914, between Ernest S. Wheeler, Assistant Commissioner of the Interior, discharging since January 17, 1914, the duties and functions of Commissioner of the Interior of Porto Rico, now in the discharge of such duties and functions and in possession of said office and acting as such Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, party of the first part, and the Fortuna Estates, a New York corporation, party of the second part.

Whereas, Fortuna Estates is the owner in fee simple of four (4) tracts of land situated in the municipality of Juana Diaz, in the district of Ponce, in the Island of Porto Rico, and claims as appurtenant thereto, by virtue of certain concessions, royal decrees of the Kingdom of Spain and user, the right to use thereon waters from the River Jacaguas for the irrigation thereof, the said lands and water rights being generally described as follows:

1. One tract known as the Estate "Fortuna", comprising approximately 312.07 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year for said estate "Fortuna."

2. One tract known as the Estate "Cristina", comprising approximately 308.14 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 108.74 liters of water per second, equivalent to 3,728.969 acre feet of water per year from said Estate "Cristina."

3. One tract known as the Estate "Luciana", comprising approximately 243.58 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Estate "Luciana."

4. One tract known as the Estate "Serrano", comprising approximately 219.15 hectares of land, with an appurtenant [fol. 34] right to take from the River Jacaguas, for the irrigation thereof, 102.47 liters of water per second, equivalent to 2,619.769 acre feet of water per year for said Estate "Serrano."

And whereas, Fortuna Estates and its predecessors in title have been for upwards of twenty years and are now taking waters from the River Jacaguas for irrigation of said tracts of land, and claims to have been doing so under and by virtue of the said concessions and the said royal decrees of the Kingdom of Spain, granting, approving and confirming the water rights aforesaid (a list of said concessions and decrees being hereto annexed and marked

"Schedule A"), such waters having been taken from the bed of said River Jacaguas through intakes built and established for the purpose by the predecessors in title of the Fortuna Estates, and

Whereas, Fortuna Estates also claims the right to take for the irrigation of the said four (4) tracts of land hereinabove mentioned torrential waters from the bed of the Jacaguas River during the time of high water without limit as to quantity except as limited by the size and the location of the intakes and the canals leading therefrom to the respective tracts of land aforesaid (a list of the concessions therefor being hereto annexed and marked "Schedule B"), and the said rights for the taking and use of such torrential waters have been exercised by the Fortuna Estates and its predecessors in title for upwards of twenty years, and are now so exercised; and

Whereas, The People of Porto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of the said irrigation system, erected a dam (known as the Guayabal Dam), across the bed of the said Jacaguas River above the said intakes which the said Fortuna Estates uses for taking water for irrigating its said four tracts of land in accordance with its said claim of right and The People of Porto Rico proposes to use the said dam for the impounding and storage of a [fol. 35] part of the waters of the River Jacaguas and of the River Toro Negro, a stream rising on the north side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which the Fortuna Estates claims to be entitled to by reason of the aforesaid concession, royal decrees and user for the irrigation of the four tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico, and said Fortuna Estates is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water rights and concessions; and

Whereas, the amount of water taken by the Fortuna Estates and its predecessors in title for the irrigation of said four tracts of land under its said claims of water rights

varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas River, so that it is impossible to determine in advance the exact amount of water to which the Fortuna Estates is entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal dam), is ready to deliver from the said Jacaguas River to the said Fortuna Estates the amount of water to which the latter may be entitled under its said concessions, but, in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part, desires to determine and agree upon an amount of water which, delivered regularly, may under all attending circumstances, be considered to be fair equivalent in value for irrigation purposes of the amount of water which the Fortuna Estates would under ordinary circumstances take and use under the said water rights and concessions; and

Whereas, the Commissioner of the Interior is authorized and empowered, by Section 13 of the amendment to the Public Irrigation Law, approved August 8, 1913, after consulting with the Attorney General of Porto Rico as to the [fol. 36] validity and legal status of the said water rights or concessions, to enter, on behalf of The People of Porto Rico, into agreement with the owner of the said water rights or concessions upon an amount of water equivalent to the water taken and used under said water rights and concessions and as to the time, place and conditions of delivery thereof to the lands to which the said water rights or concessions are appurtenant; and

Whereas, the Attorney General of Porto Rico has been duly consulted, as provided by said Act;

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereinafter contained, said Acting Commissioner of the Interior, in representation and on behalf of The People of Porto Rico, do hereby covenant and agree as follows:

First. The parties hereto hereby agree that the quantities of water specified in this paragraph, delivered uniformly through the year, subject to the terms and conditions specified in this agreement, together with the additional water the right to take which is provided for or reserved

in paragraphs Third and Fourth hereof, are the fair equivalent in value of the water which the said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, make delivery to the Fortuna Estates, for the irrigation of the said tracts of land hereinabove referred to, of the said amounts of water, to wit:

For the Estate Fortuna, 3,306.45 acre feet per year;
For the Estate Cristina, 1,312.48 acre feet per year;
For the Estate Luciana, 1,260.22 acre feet per year;
For the Estate Serrano, 2,379.83 acre feet per year.

The waters so to be delivered shall be delivered, subject to the conditions hereinbelow expressed, in substantially equal quantities from day to day, to wit:

For the Estate Fortuna, 9.06 acre feet daily;
[fol. 37] For the Estate Cristina, 3.59 acre feet daily;
For the Estate Luciana, 3.45 feet daily;
For the Estate Serrano, 6.52 acre feet daily.

Second. The People of Porto Rico will deliver the said water as follows:

(a) The water deliverable hereunder for the Estate Fortuna, at the intake provided by Fortuna Estate for a reservoir established on the Estate Cristina.

(b) The water deliverable hereunder for the Estate Cristina, as follows:

741.21 acre feet per annum at the intake provided by Fortuna Estates for a reservoir established on the Estate Cristina, and

571.27 acre feet per annum in the bed of the river to be taken by pump at a pumping station heretofore established by the Fortuna Estates near the right bank of the said Jacaguas River, known as the Aruz Pumping Station.

(c) The water deliverable hereunder for the Estate Serrano, at the present low-water intake of that Estate on the Jacaguas River.

Exempt in the cases of shortage of water in the reservoir behind the Guayabal Dam hereinafter provided for, the presence of water in the river bed at the intakes of the

Aruz pumping station and the Serrano Canal, respectively, in quantities sufficient to permit the taking at the said intakes of the amounts of water specified shall be deemed to be deliveries in accordance with the last two provisions.

The People of Porto Rico, however, reserves the right, upon giving twenty-four hours' notice to the manager or other person in authority of the Estate Serrano to deliver such water at the intake established by Fortuna Estates for the reservoir upon the Estate Cristina.

(d) The water deliverable hereunder for the Estate Luciana, at the intake provided by Fortuna Estates for a reservoir established on the Estate Luciana.

Third. Fortuna Estates is hereby granted the right while [fol. 38] this agreement remains in force to take in addition to all amounts of water above specified, from the Jacaguas River by pump at the said Aruz Pumping Station, water which may be available there for irrigation of any of its said lands, to the extent that such taking shall not deprive any owners or users of subsisting water rights or concessions upon the Jacaguas River of the water to which such owners or users may be entitled, either by virtue of such water rights or concessions or by virtue of any agreement or agreements in regard thereto entered into or to be entered into by them with The People of Porto Rico; Provided, however, that should The People of Porto Rico at any time undertake the development and utilization of the surplus waters of this part of the Jacaguas River, this right shall be understood to be limited to a maximum usage of 3.86 second feet.

The Fortuna Estates shall maintain at the said Aruz Pumping Station an accurate and appropriate measuring device for the measurement of the water taken from the river at such station, which shall at reasonable times be subject to inspection by the properly accredited employees of the Irrigation Service.

Fourth. In addition to the amounts of water hereinbefore set forth, the Fortuna Estates hereby reserves and shall have the right to take torrential waters from the Jacaguas River through its head-gates at present existing for the use of torrential waters. Such head-gates, wherever they do

not conform to the terms of the concession, shall be reconstructed in conformity therewith, and such use of torrential waters shall be subject to such priorities in the use of torrential waters as may exist in the said Jacaguas River. The foregoing provision, however, shall not in any way limit The People of Porto Rico from restraining all of the torrential flood waters which it may desire and which it may be legally entitled to restrain in the reservoir above the Guayabal dam.

To the extent that there may be waters derived through underground filtration or seepage from the River Jacaguas or its tributaries or from the reservoir maintained behind [fol. 39] the said Guayabal dam, which rise to or near the surface of the ground within the boundary lines of any so-called "poyal" or "semi-poyal" portions of any of the tracts of land owned, leased, operated or cultivated by the Fortuna Estates, its successors or assigns, or any waters so derived in wells made or to be made upon any portions of said lands or any of them, which are not strictly subterranean waters, within the meaning of that term as used in the Laws of Porto Rico, and the full property of the owner or possessor of said lands, the said Fortuna Estates, its successors, lessees and assigns, while this agreement remains in force, may make use of the said waters and all portions thereof in such manner and for such purposes as it or they shall from time to time elect without payment or responsibility to The People of Porto Rico for or in respect thereto, except in so far as such right and the means adopted or to be adopted for its exercise may be limited, modified or restricted by the provisions of the Law of Waters.

Fifth. During ten days in each year, while this agreement is in force, The People of Porto Rico shall deliver to said Fortuna Estates, and the latter may take and use, at its present intakes in the Jacaguas River (as indicated upon the annexed chart furnished by Fortuna Estates marked "Schedule C") built and used for said respective tracts of land, in lieu of all quantities of water elsewhere specified in this agreement except in Section "Fourth" the amount of water which said Estates claims to be entitled to take for each of said four tracts of land under the said concessions and water rights, to wit:

For the Estate Fortuna, 139.75 liters of water per second;
For the Estate Cristina, 106.74 liters of water per second;
For the Estate Luciana, 82.54 liters of water per second;
For the Estate Serrano, 102.47 liters of water per second.

The presence of water in the river bed of the Jacaguas River, at the openings of the said intakes, in quantities sufficient to permit the taking by the Fortuna Estates of the quantities of water specified in this paragraph, shall be deemed a delivery in accordance with this paragraph on behalf of The People of Porto Rico.

[fol. 40] Forty-eight hours' notice shall be given, by or on behalf of the Irrigation Service, to the manager of or other person in authority upon the Fortuna Estates, of the proposed delivery of water to the Fortuna Estates in accordance with the other terms of this section instead of in accordance with the other terms of this agreement.

Sixth. Whenever and as long as there is no storage water in the reservoir behind said Guayabal dam, The People of Porto Rico shall deliver, subject to the terms of this agreement, to the Fortuna Estates the quantities of water herein provided for from the flow of the Jacaguas River exclusive of water added thereto from the Toro Negro River; but such delivery shall be subject to be cut off or diminished when and so long as and to the extent that such flow is insufficient to supply all water deliverable to the owners or users of subsisting valid water rights or concessions having priorities for the use of the waters of the Jacaguas River (whether by virtue of such rights or concessions, or by virtue of agreements with regard thereto entered into between such owners or users and the Commissioner of the Interior or any other person or body authorized by law to enter into such agreements in representation of The People of Porto Rico) in accordance with the "Order of Suspension" established in the Definitive Table of Distribution of the River Water of the Jacaguas, approved by Royal Decree of June 8, 1880, a copy of which is hereto annexed marked Schedule D.

The People of Porto Rico shall have the right to divert from the reservoir behind the Guayabal dam into the Juana Diaz Canal, or any other canals of the Irrigation System, the amount of water flowing into the reservoir from the

Toro Negro River or from any other sources than the Jacaguas River, whether or not there is any storage water in the Guayabal Reservoir; and it is further understood and agreed by and between the parties, that, as far as the Fortuna Estates is concerned, The People of Porto Rico may divert all the waters of the Jacaguas River, after providing for the delivery to the Fortuna Estates of the waters [fol. 41] to which it is entitled, as specified in this agreement, into the Juana Diaz Canal or any other canals, ditches or reservoirs of the Irrigation System.

It is understood and agreed that the expression "storage water" does not include water in the said reservoir not rising to a height more than three feet above the bottom of the outlet gates to the Juana Diaz Canal.

Seventh. In the event that, for any cause, whether within or beyond the control of The People of Porto Rico (except in the case hereinbefore provided for), the delivery of water to the Fortuna Estates at any point shall be temporarily, partly or wholly interrupted, The People of Porto Rico shall, during the continuance of such cause, deliver an equivalent amount of water to the Fortuna Estates at some other point in the irrigation canals of Fortuna Estates to be selected by the Irrigation Service.

Eighth. In the event that the Fortuna Estates, its successors or assigns, shall at any time determine that it is to its or their best interest to discontinue the use of the storage reservoirs constructed upon the Estates Cristina and Luciana, the waters to be delivered into such reservoirs, as hereinabove agreed, shall be delivered either into the present intakes in the Jacaguas River appurtenant to the lands in question or at such other point or points upon or adjacent to said lands as the Fortuna Estates, its successors or assigns shall determine: Provided, however, that such delivery at places other than said present intakes shall be made without loss of water to The People of Porto Rico, and that all extra expenses occasioned by such delivery shall be borne by the Fortuna Estates, its successors or assigns.

Ninth. The People of Porto Rico consents that, to the extent that the owners or users of valid and subsisting water rights may not be prejudiced, the Fortuna Estates

may apply the water deliverable hereunder or any part of it to the irrigation of any of the lands hereinbefore described or any parts or portion thereof.

Tenth. It is further specifically understood and agreed by and between the parties hereto that any temporary or [fol. 42] other arrangement or agreement made between the said Fortuna Estates, its successors, lessees or assigns, or any official or representative thereof and any official of the Government of Porto Rico with respect to the taking and use of waters from the River Jacaguas, the measurement of such waters, the building of reservoirs, canals, siphons and pipe lines, the diversion of waters from one tract of land to another, the time during which waters shall be deliverable from time to time, the amount of water to be delivered at any point or points at any time or times, the purchase of surplus water from time to time, or any other matters connected with the use of the said waters of the Jacaguas River, and the irrigation therewith of the lands owned, leased and cultivated by the Fortuna Estates, its successors or assigns, shall at all times and for all purposes be deemed to be subject to the terms and provisions of this agreement, and shall not affect or modify the same or be deemed or considered so to do or to affect or prejudice the rights of either party hereunder.

Eleventh. It is agreed by both parties that the delivery to and the use by the Fortuna Estates of water in accordance with the terms and conditions expressed in this agreement shall not in any event affect or modify the present existing status of the water rights and concessions claimed by the said Fortuna Estates; but that such delivery and use is to be made in view of the modified physical conditions resulting in the bed of the River Jacaguas from the establishment of the public irrigation system, which on the one hand henceforth permit the delivery to and the use by the Fortuna Estates of a substantially uniform flow of water, as provided in this agreement, and on the other modifies to some extent the use of the water heretofore made by the Fortuna Estates; that such delivery and use shall continue as long as such modified conditions continue to exist, and in the event of the total or partial destruction of the Guayabal dam, or of the main canal

known as the Juana Diaz Canal, connected therewith, from any cause whatsoever, and the resulting inability of The People of Porto Rico to comply with the terms of [fol. 43] this agreement, the Fortuna Estates may forthwith exercise such rights as it has under the said concessions and grants, but as soon as The People of Porto Rico shall have reestablished or reconstructed the works so destroyed in substantially the same form as at present constructed, or in such a manner as to enable it to perform substantially the terms of this agreement, this agreement shall be revived and be in full force and effect from such time.

Twelfth. Neither the execution of this agreement by the Fortuna Estates nor the acceptance and use of water delivered to it as herein provided, nor any consent, waiver or permission given or held to be given hereby or hereunder, nor any failure on the part of the Fortuna Estates, acting in accordance with this agreement to take and use water in accordance with the exact terms of its said concessions and water rights, or any of them, nor anything done or suffered by said Fortuna Estates hereunder or in accordance with the terms hereof or pursuant to the provisions herein contained, shall at any time or for any purpose be deemed to affect, modify or change to any extent the status of the said water rights and concessions claimed by the Fortuna Estates as existing at the time this agreement was entered into, or to limit or prejudice any rights or privileges which the Fortuna Estates, its successors or assigns, may have under or by virtue of the said concessions, and the grants and decrees respecting the same hereinabove described, or by virtue of the use of the said water of said Jacaguas River, heretofore made by it and its predecessors in title.

Thirteenth. In the event of the permanent abandonment by The People of Porto Rico of said irrigation system utilizing the waters of the Jacaguas River, or in the event that The People of Porto Rico or the official or officials body in charge of the irrigation service shall be enjoined or restrained by final order or decree of any court of competent jurisdiction from carrying out the provisions of this agreement, then this agreement shall become null and of no force and the Fortuna Estates shall be entitled to

the exercise of any and all the rights which it had at the [fol. 44] time this agreement was entered into as if this agreement had never been entered into or performed in whole or in part by either party hereto; and in the event that The People of Porto Rico or the official or officials body in charge of the irrigation service shall, without reasonable cause, fail or refuse to deliver water to the Fortuna Estates, its successors or assigns, substantially as herein agreed, then and in any such event, and for so long as said failure or refusal shall continue, the Fortuna Estates shall be entitled to the exercise of any and all the rights which it had at the time this agreement was entered into as if this agreement had never been entered into or performed in whole or in part by either party hereto.

Fourteenth. Nothing in this agreement contained shall be taken to impair or abridge such right as The People of Porto Rico may have to modify, enlarge or improve any of the works or structures of the irrigation system, or to add other works or structures thereto.

Fifteenth. This agreement shall apply to, benefit and bind the successors, lessees and assigns of the parties hereto to the same extent that it applies, benefits and binds such parties.

Sixteenth. The party of the first part hereby agrees that upon the request of the party of the second part, the party of the first part or the officer or official who may at the time be discharging the functions of the Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, will execute a public document embodying this agreement in conjunction with the party of the second part, and the party of the second part hereby agrees that it will execute, upon the request of any Commissioner of the Interior of Porto Rico, duly appointed and acting as such, or in case the office of Commissioner of the Interior shall be abolished by Act of Congress, then and in such event upon the request of the officer or official duly appointed under an Act of Congress to perform the duties and functions now performed by the Commissioner of the Interior, a public document embodying this agreement, and each party hereby agrees [fol. 45] that it will cooperate with the other in taking all

steps necessary to have this agreement or the public document embodying the same duly recorded in the proper Registry of Property and will execute or cause to be executed such documents and papers as may be necessary or proper to this end; and it is further specifically agreed that failure on the part of either party to comply with the provisions of this clause Sixteenth shall constitute a total breach of this agreement and that the other party hereto, unless such breach be waived by it, shall thereupon be entitled to the exercise of any or all of the rights it had at the time this agreement was entered into, as if this agreement had never been entered into or performed in whole or in part by either party hereto.

In witness whereof The People of Porto Rico have caused these presents to be signed by the Acting Commissioner of the Interior, acting in representation and on behalf of The People of Porto Rico, and Fortuna Estates has caused these presents to be signed by its attorney in fact, Julius Umbach, all on the day and year first hereinabove written.

E. S. Wheeler, Acting Commissioner of the Interior.
Jul Umbach, Attorney in fact of Fortuna Estates.

Witness-: M. Lozano, F. Manuel Toro.

Affidavit No. 400

Island of Porto Rico,
City of Ponce, ss:

On this t-enty-sixth day of August, 1914, before me, a notary public, personally came and appeared Julius Umbach of age, merchant, a resident of the City of Ponce, to me personally known, and acknowledged that he signed the foregoing instrument as attorney in fact of Fortuna Estates.

F. Manuel Toro, Notary Public.

[fol. 46] Affidavit No. 1397

Notaria de Monserrat

Island of Porto Rico,
City of San Juan:

On this twenty-eighth day of August, 1914, before me a notary public, personally came and appeared Ernest S. Wheeler, of age, married, Acting Commissioner of the In-

terior, a resident of the City of San Juan, to me personally known, and acknowledged that he executed the foregoing instrument in representation and on behalf of The People of Porto Rico.

Damian Monserrat, Notary Public.

SCHEDULE "A"

Names of the property	Dates of irrigation concessions	Dates of royal decrees
Luciana	December 23, 1848	June 8, 1880
Cristina	March 17, 1852	June 8, 1880
Fortuna	October 5, 1846	June 8, 1880
Serrano	September 26, 1845	June 8, 1880

SCHEDULE "B"

Names of the properties	Dates of concessions	Torrential width of intakes	Royal decrees
Luciana	September 1, 1878	1 meter	June 8, 1880
Fortuna	January 10, 1879	1 meter	June 8, 1880
Serrano	November 21, 1878	1 meter	June 8, 1880

J. U.

At the termination of the above contract and Schedules "A" and "B" there also appears another schedule marked "D" referring to certain water distributions, and also Schedule "C" which is a blue print and it being impracticable to copy these two last mentioned documents in this instrument, the originals thereof are hereto annexed and made a part hereof and are herein protocolized and made a part of this document, from which copies should be issued hereafter.

The appearing party, Manuel V. Domenech, in repre- [fol. 47] sentation of and on behalf of The People of Porto Rico, and the appearing party Julius Umbach, in representation of and on behalf of the Fortuna Estates, declare and agree that the private contract hereinbefore referred to, copied and inserted, is now and shall continue in full force and effect and that the said contract and all provisions thereof are and shall continue to be binding upon their respective principals represented by them in this proceeding, and they hereby on behalf of their said principals respectively accept, ratify and confirm the said private contract and each and every clause and provision thereof; and in compliance with the agreement therein contained to embody said private contract in a public in-

strument they now do so by these presents and desire that embodying of the same herein shall have the same legal effect and the same force as if the same had been executed in a public instrument in the first instance.

Such is the public instrument executed by the appearing parties, which they execute, accept and sign before the undersigned notary public and in presence of the witnesses Francis E. Neagle and Enrique Castro, who are residents of this city and competent to be such, and who are personally known to me, and I, the notary, hereby certify to all of the statements herein set forth.

Manuel V. Domenech, Jul Umbach, Frank Antonsanti.

Francis E. Neagle, Enrique Castro Gonzalez.

I hereby certify that the foregoing is a true and correct copy of the above contract executed by the parties therein on the date therein expressed, the original thereof remaining in my protocol and bears number twenty.

In witness whereof, and for the purpose of delivery to the Fortuna Estates, I issue this copy on the same day, month and year of its execution. Interlineation—to—quantities—or to be adopted, are noted.

Frank Antonsanti.

[Internal Revenue stamp.]

SCHEDULE D

Cuadro Que Se Cita Cuadro Definitivo de Distribucion de Aguas del Rio Jacaguas de la Isla de Puerto Rico

Nombres de las haciendas Fuente del pueblo de Juana Diez	Fechas de las concesiones de riegos	Superficies totales de las haciendas		Terrenos con derecho a riego hectareas	Coeficiente de litros adoptado por hectareas y segundos		Cantidades de agua correspondientes litro por segundo	Numero de orden para la suspension de los riegos
		Cuerdas	Hectareas					
				"	"		4.00	13
Luciana	23 de Diciembre de 1848	619.73	243.58	117.91	0.70		82.54	4
Cristina	17 de Marzo de 1852	784.00	308.14	152.49	0.70		106.74	4
Fortuna	8 de Mayo de 1841.							
		794.00	312.07	199.64	0.70		139.75	12
	5 de Octubre de 1846.							
	23 de Abril de 1846.							
Potala		1785.00	701.57	224.42	0.70		157.09	8
	21 de Junio de 1859.							
Amelia	30 de Octubre de 1846	1378.77	541.91	294.00	0.70		205.80	2
	3 de Marzo de 1846	.....	.....	171.68	0.70		120.17	9
Ursula		1773.00	696.88	.....	.....		.....	..
	28 de Julio de 1855	.....	.....	79.21	0.50		39.60	7
	2 de Octubre de 1846	382.00	150.14	.....	.....		.....	..
Union		.....	.....	204.93	0.50		102.47	10
Serrano	26 de Septiembre de 1845	557.60	219.15	100.67	0.70		70.47	..
							97.04	11
							133.26	..
	14 de Mayo de 1845	878.84	345.41	125.58	0.50	62.79	36.22	..
Boca Chica	7 de Noviembre de 1860	.....	.....	75.54	0.70	52.88	.....	1
	7 de Marzo de 1867.							
San Fernando		"	75.54	.....	.....	.....	.....	..
	20 de Abril de 1870	.....	.....	31.44	0.70	22.03	.....	2
Placeres	1865 por prescripcion	612.00	240.54	.....	.....	.....	.....	..
						1166.30		

Madrid 8 de Junio de 1880.

Aprobado por S. M. Sanchez Bustillo
General Francisco Fontanals y Martinez.
J. U.

Es copia. El Secretario del Gobierno.

[fol. 49] EXHIBIT B TO ANSWER

"Union" and "Placeres" Contract

Memorandum of Agreement made this twenty-sixth day of August, 1914, between Ernest S. Wheeler, Assistant Commissioner of the Interior, discharging since January 17, 1914, the duties and functions of Commissioner of the Interior of Porto Rico, now in discharge of such duties and functions and in possession of said office and acting as such Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, party of the first part, and Jose A. Poventud, Isabel Cortada Vda. de Proventud, Juan Torruella y Cortada y Sergio Torruella, party of the second part.

Whereas, Jose A. Poventud, Isabel Cortada Vda. do Poventud, Juan Torruella y Cortada and Sergio Torruella, are the owners in fee simple of two (2) tracts of land situated in the Municipality of Ponce, in the District of Ponce, in the Island of Porto Rico, and claims as appurtenant thereto, by virtue of certain concessions, royal decrees of Kingdom of Spain and user, the right to use thereon waters from the River Jacaguas for the irrigation thereof, the said land and water rights being generally described as follows:

1. One tract known as the Estate "Union", comprising as shown on the table "Cuadro Definitivo de Distribucion de Aguas del rio Jacaguas", of June 8th, 1880—approximately 150.14 hectares of land, with an appurtenant right to take from the river Jacaguas for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for said Estate "Union".

2. One tract known as the Estate "Placeres", comprising—as shown on the table "Cuardo Definitivo de Distribucion de Aguas del rio Jacaguas", of June 8, 1880—approximately 240.54 hectares of land, with an appurtenant right to take from the river Jacaguas, for the irrigation thereof, 22 liters of water per second, equivalent to 565.75 feet of water per year for said Estate "Placeres".

[fol. 50] And Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella and its predecessors in title have been for upwards of twenty years and are now taking waters from the

river Jacaguas for irrigation of said tract of land, and claims to have been doing so under and by virtue of the said concessions and the said royal decrees of the Kingdom of Spain, granting, approving and confirming the water rights aforesaid (a partial list of said concessions and decrees being hereto annexed and marked "Schedule A"), such waters having been taken from the bed of said river Jacaguas through intakes built and established for the purpose by the predecessors in title of Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella; and

Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, also claim the right to take for the irrigation of the said two (2) tracts of land hereinabove mentioned torrential waters from the bed of the Jacaguas river during the time of high water without limit as to quantity except as limited by the size and location of the intakes and the canals leading therefrom to the respective tracts of land aforesaid (a list of the concessions therefore, being hereto annexed and marked "Schedule B"), and that said rights for the taking and use of such torrential waters have been exercised by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, and their predecessors in title for upwards of twenty years, and are now so exercised; and

Whereas, The People of Porto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of said irrigation system, erected a dam (known as the Guayabal dam) across the bed of the said Jacaguas river above the said intakes which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella use for taking water for irrigating its said two tracts of land in accord-[fol. 51] ance with its said claim of right; and The People of Porto Rico proposes to use the said dam for the impounding and storage of a part of the waters of the river Jacaguas and of the river Toro Negro, a stream rising on the north side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which

the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella and Cortada, and Sergio Torruella claim to be entitled to by reason of the aforesaid concessions, royal decrees and user for the irrigation of the two tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico and said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water rights and concessions; and

Whereas, the amount of water taken by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella and its predecessors in title for the irrigation of said two tracts of land under its said claim of water rights varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas river, so that it is impossible to determine in advance the exact amount of water to which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Jose Torruella y Cortada, and Sergio Torruella are entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal Dam) is ready to deliver from the said Jacaguas river to the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella the amount of water to which the latter may be entitled under its said concessions but in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part, desired to determine and agree upon an amount of water which, delivered regularly, may, under [fol. 52] all attending circumstances, be considered to be the fair equivalent in value for irrigation purposes of the amount of water which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella would under ordinary circumstances take and use under the said water rights and concessions; and

Whereas, the Commissioner of the Interior is authorized and empowered, by Section 13 of the amendment to the Public Irrigation Law, approved August 8, 1913, after consulting with the Attorney General of Porto Rico as to the

validity and legal status of the said water rights or concessions to enter, on behalf of The People of Porto Rico, into agreement with the owner of the said water rights or concessions, upon an amount of water equivalent to the water taken and used under said water rights and concessions and as to the time, place and conditions of delivery thereof to the lands to which the said water rights or concessions are appurtenant; and

Whereas, the Attorney General of Porto Rico has been duly consulted, as provided by said Act;

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereinafter contained, the said Acting Commissioner of the Interior in representation and on behalf of The People of Porto Rico, party of the first part and the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada, and Sergio Torruella, do hereby covenant and agree as follows:

First. The parties hereto hereby agree that the quantities of water specified in this paragraph, delivered uniformly throughout the year, subject to the terms and conditions specified in this agreement, together with the additional water the right to take which is provided for or reserved in paragraphs third and fourth hereof, are the fair equivalent in value of the water which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella takes under and pursuant to the concessions and water rights claimed by it, [fol. 53] and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery, hereinafter provided for, make delivery to the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, for the irrigation of the said tract of land hereinabove referred to, of the said amount of water, to wit:

For the Estate Union, 760.17 acre-feet per year;

For the Estate Placeres, 186.38 acre-feet per year.

The waters so to be delivered shall be delivered subject to the conditions hereinbelow expressed, in substantially equal quantities from day to day, to wit:

For the Estate Union, 2.08 acre-feet daily;

For the Estate Placeres, 0.51 acre-feet daily.

Second. Except in the case of shortage in the reservoir behind the Guayabal Dam herein provided for, the water deliverable hereunder for the Estates Union and Placeres shall be delivered at the present intakes of the respective estates, or may at the option of the Irrigation Service be delivered at any part of the canal of the respective estates equally advantageous to the owners of the said estates.

(The water for Union to be taken by pump.)

Third. Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella and Cortada, and Sergio Torruella are hereby granted the right, while this agreement remains in force, to take in addition to all amounts of water above specified, from the Jacaguas river, by pump, at the Union pumping station, water which may be available there for irrigation of any of the lands to the extent that such takings shall not deprive any owner or user of subsisting water rights or concessions upon the Jacaguas river of the water to which such owners or users may be entitled, either by virtue of such water rights or concessions or by virtue of any agreement or agreements in regard thereto entered into or to be entered into by them with The People of Porto Rico, provided, however that should The People of Porto [fol. 54] Rico at any time undertake the development and utilization of the surplus waters in this part of the Jacaguas River, this right shall be understood to be limited to a maximum usage of 1.40 second feet.

Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, shall install within sixty days after notice from the Irrigation Service and maintain at the Union Pumping Station, an appropriate measuring device for the measurement of the water taken from the river at such station, which shall, at all times, be subject to inspection by the properly accredited employees of the Irrigation Service.

Fourth. In addition to the amounts of water hereinbefore set forth, the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella hereby reserve and shall have the right to take torrential waters from the Jacaguas river through its head-gates at present existing for the use of torrential waters. Such headgates, whenever they do not conform to the terms of the

concessions, shall be reconstructed in conformity therewith, and such use of torrential waters shall be subject to such priorities in the use of torrential waters as may exist on the said Jacaguas river. The foregoing provisions, however, shall not in any way limit The People of Porto Rico from restraining all of the torrential flood waters which it may desire, and which it may be legally entitled to restrain in the reservoir above the Guayabal Dam.

To the extent that there may be waters derived through underground filtration or seepage from the River Jacaguas or its tributaries or from the reservoir maintained behind the said Guayabal Dam, which rise to or near the surface of the ground within the boundary lines of any so-called "semiroyal" portions of any of the tracts of land owned, leased, operated or cultivated by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors or assigns, or any waters derived in wells made or to be made upon any portions of said lands, or any of them, which are not strictly [fol. 55] subterranean waters, within the meaning of that term as used in the laws of Porto Rico and the full property of the owner or possessor of said lands, the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors, lessees or assigns, while this agreement remains in force, may make use of the said waters and all portions hereof in such manner and for such purposes as it or they shall from time to time elect, without payment or responsibility to The People of Porto Rico for or in respect thereto, except in so far as such right and the means adopted or to be adopted for its exercise may be limited, modified or restricted by the provisions of the Law of Waters.

Fifth. During ten days in each year, while this agreement is in force, The People of Porto Rico shall deliver to said Jose A. Poventud, I. Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, and the latter may take and use at its present intakes in the Jacaguas river, as indicated upon the annexed chart furnished by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella (marked "Schedule S"), built and used for said respective tracts of land,

in lieu of all quantities of water elsewhere specified in this agreement except in Section Fourth, the amount of water which said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella claims to be entitled to take for each of said two tracts of land under the said concessions and water rights, to wit:

For the Estate Union, 39.60 liters of water per second (to be taken by pump).

For the Estate Placeres, 22 liters of water per second.

The presence of water in the river bed of the Jacaguas river, at the openings of the said intakes, in quantities sufficient to permit the taking by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella of the quantities of water specified in this [fol. 56] paragraph, shall be deemed a delivery in accordance with this paragraph on behalf of The People of Porto Rico.

Twenty-four hours' notice shall be given by or on behalf of the Irrigation Service, to the manager of or other person in authority upon the Union and Placeres Estates, of the proposed delivery of water to the Union and Placeres Estates in accordance with the terms of this section instead of in accordance with the other terms of this agreement.

Sixth. Whenever and as long as there is no storage water in the reservoir behind said Guayabal dam, The People of Porto Rico shall deliver subject to the terms of this agreement, to Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, the quantities of water herein provided for from the flow of the Jacaguas river exclusive of water added thereto from the Toro Negro river; but such delivery shall be subject to be cut off or diminished when so long as and to the extent that such flow is insufficient to supply all water deliverable to the owners or users of subsisting valid water rights or concessions having priorities for the use of the waters of the Jacaguas river, whether by virtue of such rights or concessions, by virtue of valuations made in accordance with the Public Irrigation Law, or by virtue of agreements with regard thereto entered into between such owners or users and the Commissioner of the Interior or any other person or body authorized by law to enter into such agreement, in representation of The People of Porto Rico, in accordance

with the "Order of Suspension" established in the Definitive Table of Distribution of the Water of the river Jacaguas, approved by royal decree of June 8, 1880, a copy of which is hereto annexed marked "Schedule D."

The People of Porto Rico shall have the right to divert from the reservoir behind the Guayabal dam into the Juana Diaz Canal, or any other canals of the Irrigation System, the amount of water flowing into the reservoir from the Toro Negro river or from any other source than the Jacaguas River, whether or not there is any storage of water in the Guayabal reservoir; and it is further under- [fol. 57] stood and agreed by and between the parties that, as far as Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella and Sergio Torruella are concerned, The People of Porto Rico may divert all the waters of the Jacaguas river, to which Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella are not entitled as specified in this agreement, into the Juana Diaz Canal or any other canal, ditches or reservoirs of the Irrigation System.

It is understood and agreed that the expression "storage water" does not include water in the said reservoir not rising to a height more than three feet above the bottom of the outlet gates to the Juana Diaz Canal.

Seventh. In the event that, for any cause, whether within or beyond the control of The People of Porto Rico (except in the case hereinbefore provided for) the delivery of water to Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, at any point shall be temporarily partly or wholly interrupted, The People of Porto Rico shall, during the continuance of such cause, deliver an equivalent amount of water to the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella at some other proper and useful point in the irrigation canals of Union and Placeres Estates, to be selected by the Irrigation Service.

Eighth. The People of Porto Rico consents that, to the extent that the owners or users of valid and subsisting water rights may not be prejudiced, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella may apply the water deliverable here-

under or any part of it to the irrigation of any of the lands hereinbefore described, or any part or portions thereof.

Ninth. It is further specifically understood and agreed by and between the parties hereto that any temporary or other arrangement made between the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y [fol. 58] Cortada and Sergio Torruella, their successors, lessees, or assigns, or representative thereof and any official of the Government of Porto Rico with respect to the taking and use of waters from the river Jacaguas, the measurement of such waters, the building of reservoirs, canals, siphons and pipe lines, the diversion of waters from one tract of land to another, the time during which waters shall be delivered from time to time, the amount of water to be delivered at any point or points at any time or times, the purchase of surplus water from time to time, or any other matters connected with the use of the said waters of the Jacaguas river, and the irrigation therewith of the lands owned, leased and cultivated by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors or assigns, shall at all times and for all purposes be deemed to be subject to the terms and provisions of this agreement, and shall not affect or modify the same or be deemed or considered so to do or to affect or prejudice the rights of either party hereunder.

Tenth. It is agreed by both parties that the delivery to and the use by the Jose A. Poventud, Isabel Cortada Vda. Poventud, Juan Torruella y Cortada and Sergio Torruella of water in accordance with the terms and conditions expressed in this agreement shall not in any event affect or modify the present existing status of the water rights and concessions claimed by the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruello; but that such delivery and use is to be made in view of the modified physical conditions resulting in the bed of the river Jacaguas from the establishment of the public irrigation system, which on the one hand will henceforth permit the delivery to and the use by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella of a substantially uniform — of water as provided in this agreement, and on

the other modifies to some extent the use of the water heretofore made by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella that such delivery and use shall continue as long as such [fol. 59] modified conditions continue to exist, and in the event of the total or partial destruction of the Guayabal Dam, or of the main canal known as the Juana Diaz Canal, connected therewith, from any cause whatsoever, and the resulting inability of The People of Porto Rico to comply with the terms of this agreement, the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella may forthwith exercise and enjoy such rights as it has under the said concessions and grants, but as soon as The People of Porto Rico shall have reestablished or reconstructed the works so destroyed in substantially the same form as at present constructed, or in such a manner as to enable it to perform substantially the terms of this agreement, this agreement shall be revived and be in full force and effect from such time.

Eleventh. Neither the execution of this agreement by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella nor the acceptance and use of water delivered to it as herein provided, nor any consent, waiver or permission given or held to be given hereby or hereunder nor any failure on the part of Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, acting in accordance with this agreement, to take and use water in accordance with the exact terms of its said concessions and water rights, or any of them, nor anything done or suffered by said Jose A. Boventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella hereunder or in accordance with the terms hereof or pursuant to the provisions herein contained shall at any time or for any purpose be deemed to affect, modify or change to any extent the status of the said water rights and concessions claimed by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella as existing at the time this agreement was entered into or to limit or prejudice any rights or privileges which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors or assigns,

[fol. 60] may have under or by virtue of the said concessions, and the grants and decrees respecting the same hereinabove described, or by virtue of the use of the said waters of said Jacaguas river heretofore made by it and its predecessors in title.

Twelfth. Nothing in this agreement contained shall be taken to impair or abridge such rights as The People of Porto Rico may have to modify, enlarge or improve any of the works or structures thereto.

Thirteenth. This agreement shall apply to, benefit and bind the successors, lessees and assigns of the parties hereto to the same extent that it applies to, benefits and binds such parties.

Fourteenth. The party of the first part hereby agrees that upon the request of the party of the second part, the party of the first part or the officer or official who may at the time be discharging the functions of the Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, will execute a public document embodying agreement in conjunction with the party of the second part, and the party of the second part hereby agrees that it will, upon the request of any Commissioner of the Interior of Porto Rico duly appointed and acting as such, or in case the Office of the Commissioner of the Interior shall be abolished by Act of Congress, then and in such event upon the request of the officer or official duly appointed under an Act of Congress to perform the duties and functions now performed by the Commissioner of the Interior, a public document embodying this agreement, and each party hereby agrees that it will cooperate with the other in taking all steps necessary to have this agreement or the public document embodying the same duly recorded in the proper Registry of Property and will execute or cause to be executed such documents and papers as may be necessary or proper to this end; and it is further specifically agreed that failure on the part of either party to comply with the provisions of this clause fourteenth shall constitute a total breach of this agreement and that the other party hereto, unless such breach be waived by it, shall thereupon be entitled to the exercise of [fol. 61] any or all of the rights it had at the time this

agreement was entered into as if this agreement had never been entered into—or performed in whole or in part by either party hereto.

In witness whereof The People of Porto Rico have caused these presents to be signed by the Acting Commissioner of the Interior, acting in representation and on behalf of The People of Porto Rico; and the parties of the second part do for themselves sign these presents, with the consent and approval of "Fortuna Estates", through its attorney in fact Julius Umbach and as sublessee of "Union and Placeres", all on the day and year first hereinabove written.

E. S. Wheeler, Acting Commissioner of the Interior. Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada, Sergio Torruella, Parties of the Second Part. Jul. Umbach, Attorney-in-fact of Fortuna Estates.

Witnesses: M. Lozano, Wm. L. Aguayo.

IN UNITED STATES DISTRICT COURT

DEMURRER TO SPECIAL DEFENSES—Filed January 10, 1931

Now comes the plaintiff and demurs to the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth separate and distinct defenses set up in paragraphs 10 to 41 inclusive of the answer to amended complaint herein, for the reason that none of said additional defenses set forth are sufficient to constitute a defense to this action.

Wherefore plaintiff prays that said nine separate and distinct defenses be stricken from the answer.

[fol. 62] San Juan, Porto Rico, January 2, 1931.

James R. Beverley, Attorney General; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff.

Copy received this third day of January, 1930.

William J. Gilleran, Attorney for Defendants.

In United States District Court

Memorandum in Support of Demurrer to Special Defenses—Filed February 9, 1931

In this suit The People of Porto Rico are claiming taxes against the defendants on certain lands in the southern part of the island. The taxes in dispute were imposed by Act No. 29, approved July 8, 1921. Defendants answered the suit, and set up, in addition, ten separate defenses which are in general of two kinds: (1) defenses based on a certain contract made between the Commissioner of the Interior of Porto Rico and the owners of the land upon which the taxes are laid. This contract was made August 26, 1914, and relates to certain arrangements made at that time between the Government and the holders of old Spanish water concessions, by which the Spanish concessions were exchanged for the right to receive water from the Government irrigation system. The second group of defenses are legal, based upon the alleged invalidity of the Act of 1921, for want of uniformity, delegation of legislative power, etc.

Plaintiff demurred to these special defenses. The position of The People of Porto Rico in this suit, so far as these defenses are concerned, is that the contract of 1914 has nothing to do with the validity or invalidity of the taxing act, and under no circumstances could have any legal connection with this act. Not one word is said in the contract about tax exemption, and even had the contract expressly agreed to exempt these lands from taxes, that part of the contract would have been null and void, since the [fol. 63] Commissioner of the Interior nor any other administrative officer can barter away the taxing power of the Government. It seems to us absolutely plain that the contract of 1914 has nothing to do with this suit. The taxing act of 1921, like any other law, must stand or fall by its own intrinsic validity or invalidity. The attaching of this contract to the answer and the injection of questions relating to it into the case, merely has a tendency to obscure the real issues and to confuse and lengthen the record. The 1921 taking act is separate and independent from the contract, and in no way impairs any valid obligation of that contract.

The other defenses are that the act levies a special assessment without the corresponding benefit; that it confiscates property rights; that it takes private property for public use wihout just compensation; that it destroys property rights; that it violates the equal protection of laws; that it delegates to administrative officers legislative powers; and that it does not provide for judicial review of the acts of the tax officers. So far as this last is concerned, attention is called to the fact that this tax, like all other taxes, may be paid under protest and suit brought to recover under Act No. 8, approved April 19, 1927. On all the other defenses, except the question of uniformity, we believe a mere reading of the act (page 366, Laws of 1921) will show that this act is like most all other taxing acts, and that these defenses are without merit.

The defendant claims that the act in question violates the uniformity clause of the Organic Act. The whole question here is as to the reasonableness of the classification, since the uniformity requirement is only that taxes be uniform within the class, and that the classification must be reasonable. The Government contends that the classification in this act, that is, the selection of lands within the irrigable area which do not contribute to the maintenance of the irrigation system, is not an unreasonable classification. The uniformity required is within the class. Atwood v. John-[fol. 64] son, 175 N. W. 589; Ludlon v. Wolbrinck, 205 S. W. 196; Robertson v. Pratt, 13 Hawaii, 590; Stebbins v. Reily, 268 U. S. 137, 69 L. Ed. 456.

In the latter case the Supreme Court of the United States said:

"It is not necessary that the basis of classification should be deducible from the nature of the thing classified. It is enough that the classification is reasonably founded in the 'purposes and policies of taxation'. Watson v. Comptroller, 254 U. S. 122; Stebbins v. Riley, 69 L. Ed. 456.

See also Maxwell v. Bugby, 250 U. S. 525-539; American Sugar Refining Co. v. Louisiana, 179 U. S. 89.

In the fourth edition of Cooley on Taxation, volume 1, page 547, we find this statement as to a constituional provision requiring taxes to be uniform:

"A tax is uniform within such provisions when it is equal upon all persons belonging to the described class upon which it is imposed."

In the case of Guano Co. v. Virginia, 253 U. S. 412, the court said:

"The latitude of discretion is notably wide in the classification of property for purposes of taxation. * * *"

In Cooley, at page 594 of volume 1, this author says:

"Classification for exemption purposes may be based on the use to which property is devoted, as well as the nature of the property; but property cannot be exempted merely because of its ownership where the same kind of property owned by others is taxed, nor according to its location. Instead of classifying property for the purpose of exemption either by its characteristics or by its uses, the legislature cannot classify the owners of property according to some characteristic possessed by them, or connected with their conduct, and thereupon base an exemption of the property of such persons, regardless of the characteristics possessed by it and of the uses to which it is put.

"Where classification for exemption is allowable, it is [fol. 65] proper to place in a separate class, particular kinds of corporations, such as railroad companies, insurance companies, building and loan associations, etc. So it is competent to make two classes of manufacturing corporations, one of which is taxed, while the other is not. And exempting from a tax, imposed on telegraph and telephone companies, those companies having gross receipts of less than $500, has been held not an unreasonable classification.

"Taxation of memberships in a chamber of commerce does not deny equal protection of the laws because memberships in the Associated Press, lodges, fraternal orders, churches, etc., are not taxed.

"A tax exemption statute which rests upon a rational classification is not invalid merely because affecting a few or even only one in its practical operation."

For these reasons we submit that the demurrer to the special defenses in the answer should be upheld and the record cleared for trial upon the facts.

San Juan, P. R., February 9, 1931.

Respectfully submitted.

James R. Beverley, Attorney General; M. Rodriguez Serra, Assistant Attorney General.

Notified with copy this ninth day of February, 1931.

William J. Gilleran, by R. Patten, Attorney for Russell & Co.

In United States District Court

Opinion on Demurrer to Special and Separate Defenses—Filed April 2, 1931

This is a suit by The People of Porto Rico to recover from the defendants herein certain alleged taxes claimed to [fol. 66] be due and owing by the defendants under Act No. 49 of 1921 upon certain lands described in paragraph 3 of the amended complaint.

In the answer to the amended complaint the defendants have set up nine separate and distinct defenses and a partial defense.

To the said nine separate and distinct defenses the plaintiff has filed a demurrer.

The said demurrer and each and every part thereof is overruled as in my opinion the matters and things set up therein constitute just and valid defenses against the cause of action set up in plaintiff's amended bill of complaint.

Dated at San Juan, Porto Rico, this second day of April, 1931.

Ira K. Wells, United States District Judge.

In United States District Court

Agreed Statement of Facts—Filed November 24, 1931

Come now the parties hereto by their undersigned attorneys and, for the purpose of the trial of this action by

this court and any and all appeals taken herein stipulate and agree upon the following statement of facts:

1. That the plaintiff is a sovereign political entity created by Act of Congress of the United States of America approved on March 2, 1917, and generally referred to as the Organic Act of Porto Rico and as the Jones Act; that Manuel V. Domenech is now and was at the time of the institution of this suit the duly appointed and qualified Treasurer of Porto Rico.

2. That the defendants, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, now constitute and at the time of the institution of this suit constituted the civil agricultural limited partnership of Russell & Co., Sucesores S. en C. (formerly Russell & Co., S. en C.), organized under the laws of Porto Rico; that at all such times said Frank A. Dillingham was and is a citizen and resident of the State of New Jersey; said Horace Havemeyer, a citizen and resident of the State of New York; Edward S. Paine, a citizen [fol. 67] and resident of the State of New York; Edwin L. Arnold, a citizen and resident of the State of Florida; Frank M. Welty, a citizen and resident of the State of Ohio, and H. B. Orde, a citizen of Great Britain and a resident of the Dominion of Canada.

3. That the amount in controversy in this suit exceeds the sum of three thousand dollars ($3,000) excluding interest and costs.

4. That said defendants are and have been at all times subsequent to the year 1921 the owners in fee simple of the four tracts known as haciendas Fortuna, Cristina, Luciana and Serrano, described in paragraph 3 of the amended complaint as farms Nos. 403, 295, 379 and 309 respectively, and in actual possession thereof.

5. That Fortuna Estates, the defendants' predecessor in title, on the twenty-sixth day of August, 1914, was and the defendants now are, by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, the owners of certain water rights in favor of said lands, for using thereon for the irrigation thereof, waters from the Jacaguas river, a non-navigable river flowing into the

Caribbean Sea, the said water rights appurtenant thereto being generally described as follows:

1. For the tract known as the Hacienda Fortuna, comprising approximately 312.07 hectares of land, the right to take from the river Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year for said Hacienda Fortuna.

2. For the tract known as the Hacienda Cristina, comprising approximately 308.14 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 106.74 liters of water per second equivalent to 2,728.969 acre feet of water per year for said Hacienda Cristina.

3. For the tract known as the Hacienda Luciana, comprising approximately 243.58 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Hacienda Luciana.

[fol. 68] 4. For the tract known as the Hacienda Serrano comprising approximately 219.15 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 102.47 liters of water per second, equivalent to 2,619.769 acre feet of water per year for said Hacienda Serrano.

6. That the said Fortuna Estates and its predecessors in title had been for upwards of twenty years prior to August 26, 1914, taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription, to the aggregate amount of 11,032.79 acre feet per year, apart from torrential waters, taking the same from the bed of said river through intakes built and established for the purpose by the defendants' predecessors in title.

7. That said Fortuna Estates, the defendants' predecessor in title, on August 26, 1914, was, and defendants now are, the owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, of the right to take and use, for the irrigation of one or more of the estates above mentioned, torrential waters from said Jacaguas river; and said Fortuna Estates and its predecessors in title for upwards of twenty years prior to the

26th of August, 1914, had been taking and using for the irrigation of said estates torrential waters from the bed of Jacaguas river during the time of high water, without limit as to quantity, except as limited by the size and location of the torrential intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription.

8. That The People of Porto Rico authorized and undertook the construction of a public irrigation system in accordance with the Public Irrigation Law approved September 18, 1908, as amended, and have in the construction of the said irrigation system erected a dam for the impounding and storage of a part of the waters of the Jacaguas river which is known as the "Guayabal Dam" and extends across the bed of the said Jacaguas river above said intakes which [fol. 69] the defendants' predecessors in title used for taking and using water for irrigating their said haciendas or estates and the estates Union and Placeres hereinafter mentioned.

9. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the Interior, pursuant to the provisions of said Public Irrigation Law, requested the defendants' predecessors in title to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said concessions, royal decrees, user and prescription, in favor of the four parcels of land mentioned above in paragraph (4) and known as Haciendas Fortuna, Cristina, Luciana and Serrano, but that said request was refused.

10. That Fortuna Estates, defendants' immediate predecessor in title, on the twenty-sixth day of August, 1914, entered into a contract with Ernest S. Wheeler, then Assistant Commissioner of the Interior, and discharging the duties and functions of Commissioner of the Interior of Porto Rico, in representation of and on behalf of The People of Porto Rico, which said contract on the eighth day of June, 1915, was protocolized and put in the form of a notarial instrument duly executed by said Fortuna Estates and by Manuel V. Domenech, then Commissioner of the In-

terior of Porto Rico, a copy of which contract is annexed to and made a part of the answer herein, marked "Exhibit A", and is incorporated herein by reference.

11. That in the year 1917 Fortuna Estates duly sold, assigned and transferred to the defendants its title to the four parcels of land described above in paragraph (4) and all its rights, benefits and privileges under the concessions referred to hereinabove in paragraphs 4, 5, 6 and 7 and otherwise, and all its rights, title and interest in and to said contract described in the preceding paragraph and all waters to which it might be entitled thereunder.

12. That Jose A. Poventud and Sergio Torruella Cor- [fol. 70] tada and the Sucesion de J. Serralles are and they and their predecessors in title at all times subsequent to the year 1921 have been the owners in fee simple of two tracts of land situated in the municipality of Juana Diaz, Island of Porto Rico, known as Haciendas Union and Placeres and described in paragraph 3 of the amended complaint as farm No. 413 and through their sub-lessees, the defendants herein, are and at all such times have been in actual possession thereof.

13. That Jose A. Poventud, Sergio Torruella Cortada and the predecessors in title of the Sucesion de J. Serralles, were on August 26, 1914, and said Jose A. Poventud, Sergio Torruella Cortada and the Sucesion de J. Serralles now are, by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, the owners of certain water rights in favor of said lands, for using thereon for the irrigation thereof, waters from the said Jacaguas river, a non-navigable river flowing into the Caribbean Sea, the said lands and said water rights appurtenant thereto being generally described as follows:

1. One tract known as the Hacienda Union, comprising approximately 150.14 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for the said Hacienda Union.

2. One tract known as the Hacienda Placeres, comprising approximately 240.54 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof,

22.00 liters of water per second, equivalent to 565.75 acre feet of water per year for the said Hacienda Placeres.

14. That prior to the year 1914 the then owners of said two tracts of land executed a lease for a term of years in favor of defendants' predecessors in title and incidentally therto assigned to defendants' predecessors in title all their rights whether by concessions, royal decrees, user and prescription or contract, for the taking of water for said lands; [fol. 71] that under the terms of said lease the lessee is obligated to pay any taxes assessed against the said lands.

15. That the said owners of said two parcels of land and their predecessors in title and defendants' predecessors in title, as lessees, had been for upwards of twenty years prior to August 26, 1914, taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription.

16. That said Jose A. Poventud and Sergio Torruella Cortada and the predecessors in title of the Sucesion J. Serralles on the twenty-sixth day of August, 1914, were, and said Jose A. Poventud, Sergio Torruella Cortada and the Sucesion de J. Serralles now are, the owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription of the right to take and use torrential waters from the Jacaguas river for the irrigation of said haciendas described above in paragraph (13) and known as Union and Placeres; and that said Jose A. Poventud and Sergio Torruella Cortada and the predecessors in title of the Sucesion J. Serralles through defendants and their predecessors in title as lessees for upwards of twenty years prior to the twenty-sixth day of August, 1914, had been taking and using for the irrigation of said estates torrential waters from the bed of the Jacaguas river during the time of high water, without limit as to quantity except as limited by the size and location of the torrential intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription.

17. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the In-

terior pursuant to the provisions of the said Public Irrigation Law, requested the predecessors in title of said Jose A. Poventud, Sergio Torruella and Sucesion J. Serrales and defendants' predecessors in title and lessees to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said con- [fol. 72] cessions, royal decrees, user and prescription in favor of the two parcels of land described above in paragraph 13 and known as Union and Placeres, but that said request was refused.

18. That said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, being the predecessors in title of the said present owners, and the lessee Fortuna Estates, being the predecessor in title of defendants as lessee, on or about the twenty-sixth day of August, 1914, entered into a contract with Ernest S. Wheeler, then Assistant Commissioner of the Interior and discharging the duties and functions of the Commissioner of the Interior of Porto Rico in representation of and on behalf of The People of Porto Rico, a copy of which contract is annexed to and made a part of the answer herein, marked "Exhibit B", and is incorporated herein by reference.

19. That thereafter in the year 1917 Fortuna Estates, being then the lessee of the said haciendas Union and Placeres with all water rights benefitting said property or the owners thereof and being lessees thereof for a term of years, duly sold, assigned and transferred to the defendants its leasehold title to said haciendas Union and Placeres mentioned above in paragraph 13 and all rights, benefits, privileges and obligations to which it and its assignors were or might be entitled under the concessions referred to hereinabove in paragraphs 13 and 15 and otherwise and in and to said contract described in the preceding paragraph and all waters to which it or its said lessors might be entitled thereunder.

20. That the officials of the Government of Porto Rico charged with the compliance of the said contracts of August 26, 1914, have complied with the same in their en-

tirety and the aforesaid properties designated hereinabove and in the amended complaint and answer as haciendas Fortuna Cristina, Luciana and Serrano, Union and Placeres have been supplied since the year 1915 and are now being supplied with water for the purpose of the irrigation of said lands from the Southern Coast [fol. 73] Public Irrigation System pursuant to and under the terms of the said contracts of August 26, 1914, hereinabove referred to in paragraphs 10 and 18 but neither the defendants herein nor the said lands so hereinabove described have received during such time or any other time nor are they now receiving nor have they been supplied nor are they being supplied with any water for the irrigation of said lands or for other purposes from the said Southern Coast Public Irrigation System except such waters as the said defendants and the said lands were and are entitled to receive under and by virtue of the contracts of August 26, 1914, hereinabove referred to.

21. That the above mentioned properties have not been and are not now subject to the payment of the irrigation tax imposed under the provisions of an Act of Legislature of Porto Rico, approved September 18, 1908, entitled "An Act to provide for the construction of an irrigation system and to provide revenues therefor; for the temporary appropriation of $200,000 to begin such work and for other purposes", as amended, but all the above mentioned properties are subject to all real property taxes levied by The People of Porto Rico for insular or municipal purposes, and all of such taxes levied from 1921 to date have been paid from year to year at the same rates paid by other properties, whether included in the Southern Coast Public Irrigation District provided by the Irrigation Law or not included therein, and whether the owners of the land have relinquished their concession for irrigation water or have not relinquished them.

22. That the first session of the Tenth Legislature of Porto Rico passed an act entitled "An Act fixing a tax on certain lands using waters from the Southern Coast Public Irrigation System on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", which law was approved by the Governor of Porto Rico on July 8, 1921, and which took effect 90 days

after its approval. Said Act is known as Act No. 49 of 1921.

23. That pursuant to and in the manner provided in the [fol. 74] said Act No. 49 of 1921, the Treasurer of Porto Rico has levied and assessed against the said parcels of land hereinabove described as special taxes for the fiscal years from 1922-23 to 1929-30 inclusive various amounts aggregating the sum of $49,918.56 which have not been paid and to collect which this suit is brought, for which said sum of $49,918.56 the defendant partnership is liable to the plaintiff herein if said Act No. 49 of 1921 is valid and legal; that in addition to the said amount of taxes so levied assessed the Treasurer of Porto Rico has demanded from the defendants and this suit is also brought to collect the additional sum of $11,698.48, as interest alleged to be due on the said unpaid taxes; that the said amount of $11,698.48 is a correct computation of the interest which would be payable as of March 30, 1930, on such taxes in case such taxes are valid and legal and in case such interest charges are legally collectible on such taxes levied and assessed as aforesaid under the said Act No. 49 of 1921.

24. That heretofore and on or about the twelfth day of June, 1926, pursuant to a final decree of this court entered June 11, 1926, in equity case No. 1250, entitled "Horace Havemeyer et al., Complainant, v. Juan G. Gallardo, Defendant", the defendants herein obtained after trial on the merits in this court an injunction forever restraining the assessment or collection of any tax under or pursuant to the said Act No. 49 of 1921, approved on or about July 8, 1921, against the defendants or the lands hereinabove described; that an appeal was thereafter taken from said final decree to the Circuit Court of Appeals, First Circuit, which appeal was pending before said Circuit Court of Appeals on March 4, 1927, and abated solely by reason of the provisions of the Act entitled "An Act to amend and reenact sections 3, 20, 31, 33, 38 and 48 of the Act of March 2, 1917, entitled 'An Act to provide a civil government for Porto Rico, and for other purposes', as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as '5a' of said Act".

[fol. 75] 25. It is expressly agreed that the agreement herein contained with respect to the truth of the facts set forth in paragraphs 5 to 19 inclusive of this agreed statement of fact, shall not be considered or construed to be an admission on the part of the plaintiff herein that such facts are in any way material or relevant to the issues involved in this case.

San Juan, P. R., November 24, 1931.

James R. Beverley, Attorney General of Porto Rico, Attorney for Plaintiff. William J. Gilleran, Attorney for Defendants.

IN UNITED STATES DISTRICT COURT

OPINION—December 7, 1931

James R. Beverley, Esq., Attorney General of Porto Rico, Attorney for Plaintiff.

William J. Gilleran, Esq., Attorney for Defendants.

This is a suit brought by The People of Porto Rico to recover from the defendants certain alleged taxes claimed to be due and owing by the defendants under Act No. 49 of 1921, upon lands described in the amended complaint.

In the answer to the amended complaint the defendants have set up nine separate and distinct defenses and a partial defense.

A jury was waived by both parties in writing and the case submitted to the court upon an agreed statement of facts.

The agreed statement of facts is short and it is not necessary to re-state them in this opinion.

Upon the issues herein joined the court finds for the defendants and against the plaintiff.

That Act No. 49 of 1921 impairs the obligations assumed by the Government under the contracts of August 26, 1914, and that said contracts are binding upon The People of Porto Rico.

In so far as said Act No. 49 of 1921 applies to defendants the same constitutes the taking of private property without due process of law.

[fol. 76] That in so far as the defendants are concerned said Act No. 49 of 1921 violates the requirement of the Or-

ganic Act of Porto Rico that the rule of taxation in Porto Rico shall be uniform.

That said Act No. 49 of 1921 is in conflict with the Treaty of Paris.

That said Act No. 49 of 1921 violates the prohibition of the Organic Act against unequal protection under the law.

That said Act No. 49 of 1921 is void for the reason that it delegates to administrative officers the legislative function of levying taxes.

That said Act No. 49 of 1921 is void in that it does not provide for any hearing or appeal before the taxes become fixed.

Judgment will be entered in accordance with this opinion in favor of the defendants and against the plaintiff upon the issues herein joined and the defendants will recover their costs herein.

Dated at San Juan, Porto Rico, this seventh day of December, 1931.

Ira K. Wells, United States District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT—December 21, 1931

A stipulation having been duly filed herein waiving trial by jury, and this action having duly come on for trial before the Honorable Ira K. Wells, Judge of the District Court of the United States for Porto Rico, the issues having been submitted to the court on an agreed statement of facts, and the court having filed its opinion herein on the seventh day of December, 1931, finding the issues herein for the defendants and against the plaintiff and ordering the entry of judgment in favor of the defendants and for their costs herein, now, on motion of William J. Gilleran, attorney for defendants, it is

Ordered and adjudged that the complaint herein be dismissed upon the merits and that the plaintiff recover nothing [fol. 77] in this action and that the defendants recover of the plaintiff herein the costs of this action to be taxed by the clerk of this court.

Done and entered at San Juan, P. R., this twenty-first day of December, 1931.

Ira K. Wells, Judge of the District Court of the United States for the District of Porto Rico.

Copy received this seventeenth day of December, 1931, and no objection as to form.

James R. Beverley, Attorney General of Porto Rico.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed January 29, 1932

To the Honorable Ira K. Wells, Judge of the United States District Court for the District of Porto Rico:

Now comes The People of Porto Rico, represented by Manuel v. Domenech as Treasurer of Porto Rico, plaintiff in the above styled and numbered case, and feeling itself aggrieved by the final judgment of this court entered against it in this case on the twenty-first day of December, 1931, hereby prays that an appeal may be allowed to it to the United States Circuit Court of Appeals for the First Circuit from said judgment, and in connection with this petition for appeal petitioner presents its assignment of errors. Petitioner further prays that the amount of security may be fixed by the order of the court allowing the appeal and that a transcript of the record, proceedings and papers upon which said judgment was made and entered, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the First Circuit sitting at Boston, Massachusetts.

San Juan, Porto Rico, January 23, 1932.

James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

[fol. 78] Receipt of copies of the above petition for appeal and of the assignment of errors is hereby acknowledged this twenty-sixth day of January, 1932, and the service of citation on appeal in this case is hereby expressly waived.

William J. Gilleran, Attorney for Defendants-Appellees.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND FIXING BOND—Filed January 29, 1932

The petition for appeal in the above styled and numbered case, filed by The People of Porto Rico, plaintiff, represented by Manuel V. Domenech, Treasurer of Porto Rico, having been duly read and considered, and upon consideration of the assignment of errors and of the records of said cause, it is ordered that the said appeal be allowed from the District Court of the United States for Porto Rico to the United States Circuit Court of Appeals for the First Circuit as prayed for in said petition, and that said appeal be returned to the United States Circuit Court of Appeals for the First Circuit in accordance with law upon condition that the petitioner, plaintiff-appellant in this cause, gives security in the sum of three hundred (300) dollars to prosecute said appeal to effect, and in default of making its appeal good, to answer to defendants-appellees for such costs and damages as may be adjudged or decreed on account of said appeal.

In witness whereof I hereto set my hand this twenty-ninth day of January, 1932.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed January 29, 1932

To the Honorable Ira K. Wells, Judge of the United States District Court for the District of Porto Rico:

Now comes plaintiff-appellant in this case, The People of Porto Rico by their attorneys, the Attorney General of Porto Rico and undersigned counsel, and in connection with [fol. 79] the petition for an appeal in this case to the United States Circuit Court of Appeals for the First Circuit, says:

That in the records, proceedings and final judgment in this case, error has been committed to the prejudice of plaintiff-appellant, to wit:

1. The court erred in failing to remand this case to the District Court for the Judicial District of San Juan, Porto Rico, as prayed for in plaintiff's amended motion to remand of August 14, 1930.

2. The court erred in overruling on April 2, 1931, plaintiff's demurrer to the special defenses in the amended answer of defendants.

3. The court erred in holding that Act No. 49 of the Legislature of Porto Rico, approved July 8, 1921, impairs the obligation of contracts between the Government of Porto Rico and the defendants.

4. The court erred in holding that said Act No. 49, approved July 8, 1921, is void in that it provides for the taking of private property without due process of law.

5. The court erred in holding that said Act No. 49, of July 8, 1921, violates the requirement of the Organic Act of Porto Rico that the rule of taxation in Porto Rico shall be uniform.

6. The court erred in holding that said Act No. 49, approved July 8, 1921, is void as being in conflict with the Treaty of Paris between the United States of America and the Kingdom of Spain.

7. The court erred in holding that said Act No. 49, of July 8, 1921, violates the equal protection clause of the Organic Act of Porto Rico.

8. The court erred in holding that said Act No. 49, approved July 8, 1921, delegates to administrative officers the legislative function of levying taxes.

9. The court erred in holding that said Act No. 49, approved July 8, 1921, is void in that it makes no provision for a hearing or appeal before the taxes become fixed.

[fol. 80] 10. The court erred in rendering judgment for the defendants and against the plaintiff and in dismissing the complaint.

11. That the judgment is contrary to law.

12. For other errors apparent from the record.

Wherefore plaintiff-appellant prays that the judgment aforesaid be reversed and that costs be adjudged against defendants.

San Juan, Porto Rico, January 23, 1932.

James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

Notified with copy this twenty-sixth day of January, 1932, and service of citation on appeal is hereby expressly waived.
William J. Gilleran, Attorney for Defendants-Appellees.

In United States District Court

Bill of Exceptions—Filed January 29, 1931

Be it remembered that on August 14, 1930, plaintiff filed an amended motion to remand this case to the District Court of San Juan and that on said date the court denied this motion, to which the plaintiff excepted; that on January 2, 1931, the plaintiff filed a demurrer to the special defenses in the answer and on April 2, 1931, the court overruled this demurrer, to which the plaintiff excepted; that this case came — to be heard on its merits on the twenty-fourth day of November, 1931, before the Honorable Ira K. Wells, Judge of the District Court of the United States for Porto Rico, whereupon the parties submitted to the court an agreed statement of facts upon which the court rendered judgment for the defendants and plaintiff excepted. Plaintiff-appellant now requests the court to approve this bill of exceptions for the purpose of its record on appeal.
[fols. 81 & 82] San Juan, Porto Rico, January 23, 1932.
James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

Notified with copy of the foregoing bill of exceptions and there is no objection to its approval by the court.
William J. Gilleran, Attorney for Defendants-Appellees.

The foregoing bill of exceptions is hereby approved this twenty-ninth day of January, 1932.
Ira K. Wells, Judge.

Bond on appeal for $300.00, approved and filed January 29, 1932, omitted in printing.

[fol. 83] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD—Filed January 29, 1932

To the Honorable Lulu G. Donohue, Clerk of the United States District Court for Porto Rico:

Please prepare transcript of the record in this case to be filed in the office of the clerk of the United States Circuit Court of Appeals for the First Circuit under the appeal taken herein and insert in said transcript the following pleadings, documents and proceedings, to wit:

1. Amended complaint.
2. Petition for removal to the United States District Court for the District of Porto Rico.
3. Order of removal.
4. Plaintiff's amended motion to remand to the District Court of San Juan.
5. Answer to amended complaint.
6. Plaintiff's demurrer to special defenses in the answer.
7. Brief in support of demurrer to special defenses.
8. Opinion of the court overruling plaintiff's demurrer to special defenses.
9. Agreed statement of facts.

[fol. 84] 10. Opinion of the court of December 7, 1931.

11. Judgment of December 21, 1931.
12. Petition for appeal.
13. Assignment of errors.
14. Bill of exceptions.
15. Order of the court allowing appeal and fixing bond.
16. Bond on appeal.
17. This præcipe.
18. Certificate of clerk.

San Juan, Porto Rico, January 25, 1932.

James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

Copy received this twenty-sixth day of January, 1932.

William J. Gilleran, by Ryder Patten, Attorneys for Defendants-Appellees.

Citation on Appeal

District Court of the United States, District of Porto Rico

The President of the United States of America to Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde, and Frank M. Welty, constituting the civil agricultural limited partnership of Russell & Co., Sucesores, S. en C., Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the second day of April, next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Porto Rico, wherein The People of Porto [fols. 85 & 86] Rico and in its representation Manuel V. Domenech, in his character as Treasurer of Porto Rico, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ira K. Wells, Judge of the District Court of the United States for the District of Porto Rico, this third day of February, in the year of our Lord one thousand nine hundred and thirty-two.

Ira K. Wells, District Judge, District of Porto Rico.

San Juan, P. R., February 13, 1932.

Returned unexecuted as per instructions of Attorney General of Porto Rico.

H. S. Hubbard, United States Marshal, by H. A. Hubbard, Deputy.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 87] IN DISTRICT COURT OF THE JUDICIAL DISTRICT OF SAN JUAN, PORTO RICO

Civil. No. 12619

THE PEOPLE OF PORTO RICO and in its Representation, Manuel V. Domenech, in his Character as Treasurer of Porto Rico, Plaintiff,

v.

RUSSELL & Co., S. en C., Defendant

Collection of Taxes

COMPLAINT

Comes now the plaintiff, The People of Porto Rico, and in its representation Manuel V. Domenech, Treasurer of the Government of Porto Rico, through the undersigned attorneys, and as a cause of action against the defendant sets forth and alleges:

I. The plaintiff, The People of Porto Rico, is a political entity invested with governmental powers, with capacity to sue, constituted by the act of the United States Congress approved the 2d of May, 1917, commonly called "The Jones Law, or Organic Act of Porto Rico".

Manuel V. Domenech is the Treasurer of the Government of Porto Rico, duly appointed, and now discharges the duties of that position in accordance with the law in force.

The defendant is a civil limited partnership organized under the laws of Porto Rico. According to the information and belief of the plaintiff, the defendant firm or entity is made up of the following persons who have associated themselves for the carrying on of the business of cultivating sugar cane under the said name in general in Porto Rico: Frank A. Dillingham, Horace Havemeyer, William H. Morgan, as regular partners; and Frank M. Welty, Edwin L. Arnold and H. B. Orde, as silent partners; the plaintiff not knowing the residence and nationality of the stated persons.

[fol. 88] II. The defendant company is owner of and derives benefits in the cultivation of cane, from the following pieces of land:

(1) Farm marked as No. 295 of the plan of the Porto Rican Southern coast irrigation system, called Cristina, with a total area of 914.90 acres, situated in the Amelas ward of the municipality of Juana Diaz, whose boundaries are the following: On the north the Jacaguas river and lots Nos. 371A, 374, 375, 377 and the main road from Ponce to San Juan; on the south, lot No. 366A, Jacaguas river, lots Nos. 291, 925C, 296, 359, 364, 366; on the east, lots Nos. 294, 296A, 317A, 319A, 323A; on the west the Jacaguas river and lots number 371 and 383.

(2) Farm called Hacienda Luciana marked as No. 379, situated in the wards of Collores Collado and Jacaguas of the municipality of Juana Diaz, with a total area of 736.71 cuerdas, the boundaries of which are the following: On the north the Jacaguas river; on the south the Jacaguas river and the main road; on the east the road between Villalba and Juana Diaz; on the west Lot No. 380 and the Jacaguas river.

(3) Farm No. 403 of the said plan, named Hacienda Fortuna, situated in the Sabana Llana ward of the municipality of Juan a Diaz, with a total area of 913.44 cuerdas, with the following boundaries: On the north lots number 307A, 335, 336, 334, 338, 339, 340, 391, 399, 402, 423 and the Jacaguas river; on the south lots Nos. 403 and 413 and the Jacaguas river; on the east the Jacaguas river; on the west the lots Nos. 412, 414, 421 and 423.

(4) Farm No. 403, named Hacienda Fortuna, situated in the Sabana Llana ward of the municipality of Juana Diaz, with an area of 913.44 cuerdas which are here set forth: On the north lots 307A, 335, 336, 334, 338, 339, 340, 391, 399, 402, 423 and the Jacaguas river; on the south lots Nos. 403 and 413 and the Jacaguas river; on the east the Jacaguas river; on the west the lots Nos. 413, 414, 421 and 423.

(5) Farm No. 309, called Hacienda Serrano, situated in the municipality of Juana Diaz, with an area of 558.69 cuerdas and with the following boundaries: On the north [fol. 89] by lots Nos. 308 and 312; on the south by the Caribbean Sea; on the east lot No. 308; on the west lots Nos. 308, 310, 311 and 316.

A certified copy of the plan of the irrigated district of the southern portion of the island, insomuch as to that part

which is pertinent, accompanies this complaint and is made to form a part thereof.

III. The farms described in paragraph 2 of this complaint have been supplied since the year 1915 and are now being supplied with water for the purpose of irrigation from the public irrigation system on the southern side of Porto Rico by virtue of a contract entered into between their owners, predecessors of the defendant company in their ownership, and the Commissioner of the Interior of Porto Rico, which contract, entered into the 26th of August, 1914, was set forth in deed No. 20, executed in San Juan, Porto Rico, the 8th of July, 1916, before the notary Mr. Frank Antonsanti.

The plaintiff alleges that all the officials of the Government of Porto Rico charged with the compliance on the part of The People of Porto Rico with the stipulations of the said contract have complied with same in their entirety, and in consequence the farms described in paragraph 2 of this complaint have received and are receiving all the volume of water agreed for the purposes of irrigation and from which their owners, i. e., the entity Russell & Co., S. en C., defendant, and its predecessors who executed the said contract have benefitted.

IV. The plaintiff alleges that the described pieces of land have not been nor are they subject to payment of the regular or ordinary tax imposed by the general law of public irrigation, with its amendments in force in Porto Rico, upon the owners benefitted by the irrigation; but that the defendant is obligated by law No. 49, approved the 8th of July, 1921, to pay to The People of Porto Rico a special tax to be applied exclusively to the payment of expenses of administration and maintenance of the irrigation system of the Southern District of the island.

The plaintiff alleges that, in accordance with the provisions of the said law, the defendant is obligated to pay the following amounts for the reasons indicated:

[fol. 90]

On the farm No. 295 for the fiscal years from 1922-1923 to 1929-1930, up to the month of March, 1930, the sum of	$4,391.14 as taxes
and	1,029.07 as surcharges

On the farm No. 379 from 1922-1923 up to 1929-1930	7,466.10	as taxes
and	1,749.68	as surcharges
On the farm No. 403 for the same fiscal years and up to March, 1930	11,279.30	as taxes
and	2,643.33	as surcharges
On the farm No. 403 for the same years and for the further reason of belonging in class C described in Section 2 of the stated law	2,707.46	as taxes
and	634.49	as surcharges
On the farm No. 413, taxes for the same years and up to the stated date	4,485.94	
and	1,051.49	

Résumé

Total of taxes owed by the mentioned farms	$49,918.56
Total surcharges owing according to law	11,698.48
Total	$61,617.04

V. The plaintiff alleges that subsequent to the year 1922 the Treasurer of Porto Rico has endeavored to collect from the defendant the corresponding taxes assessed accordant with the provisions of the said law No. 49 of 1921, and that the defendant has refused to pay them, notwithstanding repeated demands for payment; and that the defendant has repaired to the District Court of the United States for Porto Rico praying for and obtaining restrictive remedies which have prevented the plaintiff up to within a short time past from exercising its last resources to effect the collection of the said taxes and legal surcharges.

[fols. 91 & 92] Wherefore, the plaintiff prays the court to sustain this complaint and for a judgment condemning the defendant to pay to the plaintiff into the Treasury of Porto Rico the sum of $61,617.04 together with its legal

interest from the filing of this complaint, and the costs expenses and attorney's fees occasioned in this litigation.

San Juan, Porto Rico, June 23, 1930.

James R. Beverley, Attorney General. M. Rodriguez Serra, Assistant Attorney General.

Filed June 24, 1930. J. N.

A true copy. Attest:

Lulu G. Donohue, Clerk, by F. R. Vareta, Deputy. (Seal.)

[fol. 93] In United States Circuit Court of Appeals for the First Circuit, October Term, 1931

No. 2678

The People of Porto Rico, Plaintiff, Appellant,

v.

Horace Havemeyer et al. (Russell & Co., Sucrs., S. en C.), Defendants, Appellees

Appeal from the District Court of the United States for the District of Porto Rico

Before Bingham, Wilson, and Morton, JJ.

Opinion—June 27, 1932

Bingham, J.:

This is an appeal from a judgment of the federal District Court in Porto Rico of December 21, 1931, dismissing the suit at law of the plaintiff-appellant on its merits. The action was brought to recover $61,617.04 due as an alleged tax under an Act of the Porto Rican Legislature (No. 49) of July 8, 1921, entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes." By agreement of the parties the case was tried by the court without a jury upon certain agreed facts and records. A general verdict or finding was made by the court in favor of the defendants, no special findings being made.

The action was brought in the District Court of San [fol. 94] Juan. The members composing the defendants' partnership removed the case to the federal District Court on the ground of diversity of citizenship. After the case was removed the plaintiff moved to remand the same. The motion was denied and the defendants answered, setting up a number of special defenses resting on the alleged invalidity of Act No. 49. The plaintiff demurred to the special defenses and the demurrer was overruled. After trial was had and a general verdict or finding in favor of the defendants was made, judgment was entered for the defendants and the plaintiff appealed.

The suit was brought June 24, 1930. November 13, 1930, the plaintiff filed an amended complaint, the material differences between the two complaints apparently being that, while the original one named all the persons, except one, constituting the defendants' partnership, it stated that their residences and nationality were not known, while in the amended complaint it stated the names of all the parties constituting the firm and gave their residences and citizenship, showing them all to be citizens and residents of states of The Union, except one who is a citizen of Great Britain residing in Canada.

It appears that the partnership, Russell & Co., Sucesores, S. en C., is composed of Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, Frank M. Welty and H. B. Orde; that they are owners through purchase from Fortuna Estates of four tracts of land known as Haciendas Fortuna, Cristina, Luciana and Serrano, and sublessees of two other tracts known as Haciendas Union and Placeres (title to the last two tracts being in Jose A. Poventud and others), all of which tracts of land lie along or abut upon the Jacaguas River; that each of these properties has appurtenant thereto rights to take water for irrigation purposes from the Jacaguas River by virtue of certain concessions and royal decrees of the Kingdom of Spain and by user and prescription; that for more than twenty years prior to August 26, 1914, Fortuna Estates, defendants' predecessor in title, and Poventud and others, their immediate lessors, had been taking and using water from the Jacaguas River for irrigation of these lands when-

[fol. 95] ever physically possible up to the aggregate amounts of the concessions; that the water was taken from the bed of the river through intakes built and maintained by the defendants or their predecessors, and also by the Aruz pump at Maturi Pool and by the Union pump; that there were also appurtenant to these properties, by virtue of concessions and royal decrees and by user and prescription, rights to take for irrigation purposes torrential waters which may exist in the Jacaguas River without limit as to quantity, except as limited by the size and location of the torrential intakes established by virtue of the said concessions, royal decrees, user and prescription; that in accordance with the provisions of the Public Irrigation Law approved September 18, 1908 (Laws of Porto Rico, 1908, Special Session, p. 44), as amended in 1911 (Laws of Porto Rico, 1911, p. 237) and by the Irrigation Law of 1913 (Laws of Porto Rico, Extraordinary Session, 1913, p. 54), The People of Porto Rico undertook the construction of a public irrigation system on the south coast of Porto Rico, and, in so doing, erected a dam for impounding and storing the waters of Jacaguas River, known as the Guayabal Dam, which extends across the bed of Jacaguas River, above the intakes which the defendants used for taking water for irrigating the tracts of land above mentioned; that the irrigation law provided that The People of Porto Rico might acquire existing water rights on the Jacaguas River in two ways: (1) by condemnation, in which case the owners would be paid in cash the fair value of their existing rights; and (2) by contracting for the relinquishment of their concessions or water rights by mutual agreement, in which case the owners would be paid not in cash but by receiving credits upon their proportional part of the expense of construction, operation and maintenance of the system; and that, if neither of these methods was pursued, Section 13 of the Act of 1913 (p. 72) provided that "such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession"; that Fortuna Estates, defendants' predecessor in title to the Haciendas [fol. 96] Fortuna, Cristina, Luciana and Serrano, and J. A. Poventud and others, the owners of Union and Placeres, refused to relinquish their concessions and the rights were not

condemned; that, in view of this, The People of Porto Rico, as authorized by the Irrigation Laws, entered into negotiations with Fortuna Estates and the owners of Union and Placeres for the purpose of fixing, in accordance with Section 13 and other provisions of law, the time and place at which the amounts of water, other than torrential water, which they were entitled to take for these six estates should be made available to the owners after the Guayabal Dam was completed and in operation; that, as a result of said negotiations, The People of Porto Rico, on August 26, 1914, entered into two contracts, one with Fortuna Estates and the other with J. A. Poventud and others, which contracts, so far as this controversy is concerned, are of a like nature; that by these contracts the amount of water which is the reasonable equivalent in value of the water rights or concessions pertaining to each tract was determined and that the same should be taken thereafter in regular daily amounts,—the amounts agreed upon being substantially less than the amounts specified in the concessions, to wit: 3,773.81 acre feet less for the four Fortuna Estates tracts and 6,331.76 acre feet less for the two tracts, Union and Placeres; that to make up the fair equivalent additional water might be taken out of surplus waters if there were any; that, so far as Fortuna Estates was concerned, the intakes through which the water was to be furnished under the contract were intakes provided by Fortuna Estates, and, so far as the water was to be pumped from the bed of the river it was "to be taken by pump at a pumping station heretofore established by the Fortuna Estates * * * known as the Aruz Pumping Station"; that leading from the intakes they had established canals on their properties which took the water to reservoirs, likewise established on their properties, from which they distributed such waters; that the contract as to Union and Placeres contained like provisions as to intakes and pump; that the contracts also provided that torrential waters could be taken from the river but that the government was not to be restrained from holding in the reservoir above the dam such torrential [fol. 97] waters as it was legally entitled to restrain; that the contracts set out and specified the number of acre feet per year which each estate was entitled to receive and it was agreed that "the quantities of water [thus] specified

The People of Porto Rico will * * * make delivery * * * for the irrigation of said tracts."

It further appears that while the several estates have been supplied since 1915 with the water agreed upon in accordance with the terms of said contracts of August 26, 1914, neither the defendants nor their said lands have at any time been "supplied with any water for the irrigation of said lands or for other purposes from said Southern Coast Public Irrigation System except such waters as" they and their lands "were and are entitled to receive under and by virtue of the contracts of August 26, 1914"; that, as required by Act 49 of 1921, the Treasurer of Porto Rico has assessed against the lands in question a special tax for the fiscal years 1922-23 to 1929-30, inclusive, in amounts aggregating $49,918.56 plus interest amounting to $11,698.48, which sums have not been paid.

In the assignments of error here argued and relied upon the plaintiff complains that the court erred (1) in failing to remand the case; (2) in holding that Act No. 49 of July 8, 1921, was void (a) as impairing the obligation of the contracts between Porto Rico and the defendants, (b) as taking private property without due process of law, (c) as violating the Organic Act which provides that taxation in Porto Rico shall be uniform, (d) as in conflict with the Treaty of Paris, (e) as violating the equal protection clause of the Organic Act, (f) in that it delegates to administrative officers the legislative function of levying taxes, and (g) in that it makes no provision for hearing or appeal before the taxes become fixed; and (3) that the court erred in rendering judgment for the defendants.

The first question raised by the assignments of error is that of the jurisdiction of the federal District Court. It is conceded that the amount involved is more than $3,000 exclusive of interest and costs. It is also conceded that the parties constituting the partnership of Russell & Co., Sucesores, S. en C., are none of them citizens of or domi- [fol. 98] ciled in Porto Rico, and that The People of Porto Rico, the party plaintiff, is a sovereign political entity created by the Act of Congress of March 2, 1917, the Organic Act. But inasmuch as the partnership Russell & Co., Sucesores, S. en C., was organized under the laws of Porto Rico and, under those laws, is an independent juridic entity, may sue and be sued in its name, and make contracts, the

plaintiff contends that it is to be regarded as domiciled in Porto Rico, the same as if it were a corporation.

This question was first presented to this court by the very parties now before us, in The People of Porto Rico v. Fortuna Estates et al., 279 Fed. 500, 505, in which the statutes affecting the jurisdiction of the federal District Court in Porto Rico and the right of removal thereto from the local island courts are set out. It is therefore unnecessary to repeat them here. In that case we held "that, where the jurisdiction of a federal court over a suit brought against a partnership depends upon diversity of citizenship, the question is to be determined by the citizenship of its members, whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name." That case was decided March 8, 1922. The People of Porto Rico applied to the Supreme Court of the United States for a writ of certiorari and the application was denied. 259 U. S. 587. In support of the conclusion reached in that case we called attention to the following authorities: Chapman v. Barney, 129 U. S. 677, 682; Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 449, 455; McLaughlin Bros. v. Hallowell, 228 U. S. 278; Bruett & Co. v. Austin Drainage Excavator Co., 174 Fed. 668; Columbia Digger Co. v. Rector, 215 Fed. 618; Empire Rice Mill Co. v. Neumond, 199 Fed. 800. In Goico v. Russell Co., 4 F. (2d) 7, the same Russell & Co. were before the court as defendants as are now, and the same question of jurisdiction was again raised and decided. There the suits had been brought in the District Court for the Judicial District of Ponce and removed to the federal District Court and after removal the motion to remand was denied. This case was decided [fol. 99] February 18, 1925, about three years after our prior decision. We there said:

"This contention is without merit. The defendant partners are domiciled in the United States and Great Britain. It is immaterial that under the law of Porto Rico the partnership is an entity referred to in the singular number. This court held in Porto Rico v. Fortuna Estates, 279 F. 500 (the same partnership now defendant in this suit), that 'where the jurisdiction of a federal court over a suit brought against a partnership, depends upon diversity of citizenship, the question is to be determined by the citizenship of

its members, whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name.' Compare also Mestre v. Russell & Co. (C. C. A.) 279 F. 44. These decisions are conclusive on the right of the defendant to remove."

In view of the consideration given to this question in our prior decisions, we do not find it necessary to consider the matter further. The motion to remand was properly denied.

In the District Court it was held that Act No. 49 of July 8, 1921, violated that clause of Section 2 of the Organic Act of Porto Rico wherein it is provided "that no law impairing the obligation of contracts shall be enacted." 39 Stat. 951.

As above pointed out the provisions of the contract of August 26, 1914, between The People of Porto Rico and Fortuna Estates, relating to the rights of the defendants to water for the tracts Fortuna, Cristina, Luciana and Serrano, are the same as those of the contract for water for the tracts Union and Placeres, and what is to be said in relation to the first named contract applies with equal force to the latter.

In People of Porto Rico v. Russell & Co., 268 Fed. 723, this court had before it the authority of the Commissioner of the Interior, acting under the advice of the Attorney General of Porto Rico, under the Act of February 29, 1908 (authorizing the establishment of the Irrigation District), as amended by the Acts of March 9, 1911 and August 8, 1913, and particularly Section 13 of the latter Act, to enter into such contract and, in the course of the opinion (p. 726), we said:

[fol. 100] "The power of the government officials to contract with the owners of water rights was, under this section [Section 13] of the statute, limited to giving in exchange for the old water rights water which would be a fair equivalent in value."

It is also pointed out that the Guayabal Dam and other irrigation appurtenances had been substantially completed in March, 1914, before the contract of August 26, 1914, was entered into; that the four tracts of land owned by Fortuna Estates had appurtenant thereto old water rights aggre-

gating 11,032.79 acre feet per year, besides an unlimited right to take torrential waters; that, in the construction of the irrigation system, Porto Rico had erected the Guayabal Dam for the purpose of storing the waters of Jacaguas and Toro Negro rivers, thereby interrupting or impairing the plaintiff's old water rights which had not been relinquished or surrendered; and that, whereas the amount of water received by Fortuna Estates for its four tracts of land under its old concessions varied from month to month, depending upon the rainfall in the watershed of the Jacaguas River, and whereas The People of Porto Rico was ready to deliver to said Fortuna Estates the amount of water to which it was entitled under said concessions, nevertheless "in order to facilitate and make more certain [possible] the operation of the said dam and the irrigation system of which it is a part, desires to determine and agree upon an amount of water which, delivered regularly, may, under all attending circumstances, be considered to be the fair equivalent in value for irrigation purposes of the amount of water which the Fortuna Estates would under ordinary circumstances take and use under the said water rights and concessions"; and that, in view of this, the parties therein agreed, for Fortuna, upon 3,306.45 acre feet per year, or 92 per cent of its old concessions appurtenant thereto, for Cristina, on 1,312.48 acre feet per year or 48 per cent of its old concessions, for Luciana, 1,260.22 acre feet per year or 59 per cent of its old concessions, and for Serrano, 2,379.63 acre feet per year or 90 per cent of its old concessions; and Porto Rico agreed that it would deliver these amounts of water to the respective estates, together with additional [fol. 101] water out of surplus, if there was any surplus; that the same were "the fair equivalent in value of the water which said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, make delivery to the Fortuna Estates for the irrigation of said tracts of land" of said amounts of water.

It is further pointed out in that opinion that the reduction in the amounts of water allowed from an aggregate of 11,032.78 acre feet to 8,258.98 acre feet (about 75 per cent) was grounded on the principle of equivalence, and

the variation in percentage to the different estates rested on the order of suspension in times of shortage.

It thus appears that the amounts of acre feet of water per year agreed upon in that contract were the equivalent in value of the old water rights or concessions which Fortuna Estates owned and which it had not relinquished to The People of Porto Rico, and that The People of Porto Rico agreed to deliver those amounts uniformly throughout the year and further specified the number of feet to be delivered per day, and the consideration therefor was the right acquired by The People of Porto Rico to carry out its irrigation scheme and operate its dam and hold back and store therein the waters of Jacaguas River, which otherwise it could not do, for the Irrigation Act of 1908, as amended in 1911 and 1913, did not make any of the lands here in question a part of the irrigation district thereby constituted. The lands embraced in the district consisted of three classes—(1) lands which had no water rights, appurtenant or otherwise, (2) lands as to which the old water rights or concessions, appurtenant thereto, had been condemned and paid for by the Irrigation System, and (3) lands as to which the old water rights or concessions appurtenant thereto had been relinquished on the condition that their values should be applied to defray their proportion of the construction, maintenance and operation of the system. But in 1921 the Legislature of Porto Rico, in Section 1 of the Act No. 49, provided:

[fol. 102] "That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation law and amendments thereto, *but which* under the *present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.*" (Italics ours.)

In other words, by this Act the Legislature of Porto Rico, without making these lands a part of the irrigation district, imposed a special tax upon the defendants because of the water agreed to be supplied from the irrigation system under the contracts of August 26, 1914, and

which The People of Porto Rico was to deliver as the equivalent in value for the old water rights that the defendants owned, the latter rights being suspended during the continuance of the contracts. People of Porto Rico v. Russell & Co., 268 Fed. 730. It is the imposition of this burden upon their right under the contracts to receive the amounts of water there stipulated for of which the defendants complain that the Legislature of Porto Rico, in enacting the law, violated Section 2 of the Organic Act, which provides:

"That no law impairing the obligation of contracts shall be enacted."

We fail to see how it can be contended that this Act does not impair the obligation of the contract which The People of Porto Rico made with Fortuna Estates, and likewise of the contract which they made with Mr. Poventud and his co-owners; and we have been unable to find in the briefs of counsel for the plaintiff any argument or suggestion leading to a contrary conclusion. The Act clearly imposes a burden upon the defendants' right to receive the waters agreed to be delivered to them by The People of Porto Rico as a substitute for their old water rights.

The Supreme Court of the United States, in considering a like provision of the federal Constitution from which this provision of the Organic Act was undoubtedly taken, said:

"A state can no more impair, by legislation, the obli- [fol. 103] gation of its own contracts, than it can impair the obligation of the contracts of individuals. We shall naturally look to the action of a sovereign state, to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals." Woodruff v. Trapnall, 10 How. 190, 207. See also Fletcher v. Peck, 6 Cranch 87; Green v. Biddle, 8 Wheat. 1, 92; Hall v. Wisconsin, 103 U. S. 5; Antoni v. Greehow, 107 U. S. 769, 795.

And as to whether a state or a municipality, under the guise of levying taxes, may impair the obligation of a contract, the Supreme Court in Murray v. Charleston, 96 U. S. 432, said:

"We do not question the existence of a State power to levy taxes * * * nor the subordination of contracts to it, so far as it is unrestrained by constitutional limitation. But the power is not without limits, and one of its limitations is found in the clause of the Federal Constitution, that no State shall pass a law impairing the obligation of contracts. * * * The constitutional provisions against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume. (Page 444.)

"There is no more important provision in the Federal Constitution than the one which prohibits States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed." (Page 448.)

See also Cooley on Taxation (4th ed.), sec. 36, page 18.

It seems to us that the Act amounts to saying that in the future Fortuna Estates' right to receive the water which The People of Poro Rico contracted to deliver to them in substitution for their old water rights and concessions shall be subject to their paying the taxes in question and impairs the obligation of The People of Porto Rico to furnish to Fortuna Estates water which the former agreed to deliver the latter.

[fol. 104] Error is also assigned to the ruling of the court that Act No. 49 of 1921 is void on the ground that it delegates to administrative officers the legislative function of levying taxes. By Section 2 of that Act the Legislature prescribes a method by which the rate and amount which lands having water rights exchanged for old concession by the contracts of August 26, 1914, should be taxed to help defray the expenses of maintaining and operating the irrigation system. According to the method there pointed out the Treasurer is first to determine the total number of acres in tracts of land receiving water from the irrigation system, including therein (1) tracts of land subject to taxation

under the irrigation law to pay the cost of the irrigation works (these are lands included in the irrigation district that had no appurtenant water rights, or, if they had any water rights, they had been condemned and paid for); (2) tracts of land (included in the irrigation district), the water rights appurtenant thereto the owners had released and had credit for; (3) tracts of land (outside the irrigation district) having water rights which had not been relinquished and which, under the contracts with The People of Porto Rico, were to be delivered in whole or in part at the canals of the irrigation system and be there measured; and (4) tracts of land (outside the irrigation district) having water rights that had not been released and paid for, which, under contracts with The People of Porto Rico, were to be taken and measured in the river at the points of intake indicated in their old concessions.

In determining the amount to be raised, the Treasurer of Porto Rico is directed to take the amount estimated by the Commissioner of the Interior to defray the cost of operation and maintenance of the irrigation system for the following fiscal year (the estimate of the Commissioner to be made and certified as provided in Section 11 of Act No. 128 of August 8, 1913), and add to this estimated amount or subtract therefrom, as the case may be, any resulting deficit below or surplus above the amount expended for operation and maintenance of the system the preceding year. The Treasurer is then to divide the amount so determined by the total number of acres (arrived at as prescribed in the [fol. 105] Act) to get the tax rate per acre to be levied during the subsequent fiscal year on lands outside the district which are not subject to a tax to meet the cost of the system.

The provision complained of in Section 2 of Act No. 49 as delegating legislative power is the one requiring the Treasurer in ascertaining the rate for assessing the tax "to take the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the following fiscal year." The contention is that the Legislature could levy and authorize the assessment of the tax in either one of two ways. It could itself fix a flat rate at which the receivers of water could be taxed per acre foot, or it could itself determine the amount of money to be raised for the ensuing year to defray the expenses of main-

tenance and operation, but that it could not delegate the determination of that amount, and thereby the rate, to the discretion of the Commissioner of the Interior; that the determination of the amount to be raised or the rate is a legislative matter involving discretion, which the legislature cannot delegate to administrative officers.

Counsel for the plaintiff, however, contend that the determination of the amount to be raised for an ensuing year is a pure matter of computation, and that the Act has pointed out how that computation shall be made. But this clearly is not so, for the amount to be raised is, by the terms of the Act, to be estimated by the Commissioner of the Interior, and as this estimate involves the exercise of legislative power, it could not be delegated to the Commissioner.

In Van Cleve v. The Commissioners, 71 New Jersey Law 574, the court, in discussing a kindred matter, said:

"Every system of taxation consists of two parts—the elements that enter into the imposition of the tax and the steps taken for its assessment and collection. The former is a legislative function, conserved by constitutional prescriptions; the other is mere machinery. The latter may be delegated to other than governmental agencies; not so the former. Matters of computation, appraisement, adjustment and such like, involving mere certainty of detail, [fol. 106] follow the delegable power, * * *; but no element that enters essentially into the tax itself may be so delegated (citing State v. Sickles, 4 Zab. 125; State v. Koster, 9 Vroom 308; and Munday v. Rayway, 14 id. 339). * * * 'These decisions are precedents in our own courts, affirming the want of power in the legislative body in which the power of taxation is vested to delegate the authority to others to determine in its judgment or discretion the amount to be raised by taxation'." (Page 581.)

It is also said:

"* * * this court is unequivocally committed to the doctrine that the legislature of this state, in which the governmental power of taxation resides, does not possess the power to delegate * * * the authority to determine, in its judgment or discretion, the amount to be raised by taxation, to which obviously must be added that such au-

thority is in effect so delegated if such body may be empowered to levy taxes to the amount of an indebtedness to be incurred by it in its judgment or discretion." (Page 58.)

See also Cooley on Taxation (4th Ed.) Vol. 1, pp. 184, 194; Vol. 3, p. 2044, 37 Cyc. p. 725.

As the conclusions reached dispose of the case, we do not think it necessary to consider the other questions raised.

The judgment of the District Court is affirmed with costs.

[fols. 107-123] Petition for rehearing, covering 17 pages, filed July 26, 1932, omitted from this print. It was denied and nothing more by order of August 5, 1932.

[fol. 124] On April 27, 1932, a certified copy of the bill of complaint (page 87) was filed by leave of court.

On the same date, to wit, April 27, 1932, this case came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting:

Thereafter, to wit, on the twenty-seventh day of June, A. D. 1932, the opinion of the court (page 93) was filed and the following Judgment was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—June 27, 1932

This cause came on to be heard April 27, 1932, upon the transcript of record of the District Court of the United States for the District of Porto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, June 27, 1932, here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed with costs.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING REHEARING—August 5, 1932

No judge who concurred in the judgment entered June 27, 1932, desiring a rehearing, It is ordered that the petition for rehearing filed July 26, 1932, be, and the same hereby is, denied.

By the Court.

Arthur I. Charron, Clerk.

MEMORANDUM RE STAY OF MANDATE

Thereafter, to wit, on August 18, 1932, mandate was stayed until further order of the court.

[fol. 125] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 126] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 5, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,189. U. S. Circuit Court of Appeals, First Circuit. Term No. 492. The People of Porto Rico, Petitioner, vs. Russell & Co., Sucrs., S. en C.: Horace Havemeyer, Frank A. Dillingham, et al. Petition for a writ of certiorari and exhibit thereto. Filed November 4, 1932. File No. 37,189.